U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 10994686

Date: SEPT. 30, 2022

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Extraordinary Ability)

The Petitioner, a printing engineer, seeks classification as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner had satisfied at least three of ten initial evidentiary criteria, as required. The Director also found that the Petitioner had willfully misrepresented material facts. The matter is now before us on appeal.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal. We will also withdraw the finding of willful misrepresentation.

I. LAW

Section 203(b)(1)(A) of the Act makes immigrant visas available to individuals with extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation; who seek to enter the United States to continue work in the area of extraordinary ability; and whose entry into the United States will substantially benefit prospectively the United States. The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate international recognition of his or her achievements in the field through a one-time achievement, that is, a major, internationally recognized award. If that petitioner does not submit this evidence, then he or she must provide sufficient qualifying documentation that meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)–(x), including items such as awards, published material in certain media, and scholarly articles.

Where a petitioner meets the initial evidence requirements through either a one-time achievement or meeting three lesser criteria, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

II. ANALYSIS

The Petitioner describes herself as "an expert on flexographic technology" with "extraordinary ability in the field of printing engineering." Flexography is a method of printing involving flexible printing plates mounted on high-speed rotors, for printing on various porous and non-porous substrates. Materials in the record refer to her as the founder and chief technology officer of [redacted], and as general manager of [redacted] If she is able to immigrate to the United States, she intends to establish a "Flexography Lab" in "the [redacted] area."

A. Evidentiary Criteria

Because the Petitioner has not indicated or shown that she received a major, internationally recognized award, she must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x). The Petitioner claimed to have satisfied six of these criteria, summarized below:

- (iii), Published material about the individual in professional or major media;
- (iv), Participation as a judge of the work of others;
- (v), Original contributions of major significance;
- (vi), Authorship of scholarly articles;
- (viii), Leading or critical role for distinguished organizations or establishments; and
- (ix), High remuneration for services.

The Director concluded that the Petitioner had not met any of the regulatory criteria. On appeal, the Petitioner asserts that she also meets four criteria, pertaining to published material about her; original contributions; authorship of scholarly articles; and a leading or critical role. The Petitioner does not contest the Director's conclusions regarding judging and remuneration, and therefore we consider those issues to be abandoned.[1]

Upon review of the record, we conclude that the Petitioner has established, by a preponderance of the evidence, that she meets the criterion at 8 C.F.R. § 204.5(h)(3)(iii) through an article about her, pertaining to her work, in *Peninsula City News*. We will discuss the other claimed criteria below.

[1] *See Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012) (stating that when a filing party fails to appeal an issue addressed in an adverse decision, that issue is waived). *See also Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n.2 (11th Cir. 2005), citing *United States v. Cunningham*, 161 F.3d 1343, 1344 (11th Cir. 1998); *Hristov v. Roark*, No. 09–CV–27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (plaintiff's claims were abandoned as he failed to raise them on appeal to the AAO).

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media. 8 C.F.R. § 204.5(h)(3)(vi).

The Petitioner submitted translated copies of six articles. One of these articles, published in *China Strategic Emerging Industry*, is credited to an author other than the Petitioner.

In a request for evidence (RFE), the Director requested circulation data, to show that the publications meet the regulatory requirements. Evidence of such material should establish that the circulation (online or in print) is high compared to other circulation statistics and who the intended audience of the publication is. 6 *USCIS Policy Manual* F.2 (appendix), https://www.uscis.gov/policymanual.

In response, the Petitioner stated that she had submitted "evidence to prove the journals are major." But the evidence in question simply described the publications, without providing circulation data as requested and required.

In the denial notice, the Director concluded that the Petitioner did not submit sufficient evidence to establish the existence of the claimed articles. We will discuss this issue further below, in the context of the Director's finding of willful misrepresentation. Here, it will suffice to say that the Director appears to have relied on incomplete information.

But the Petitioner has not adequately addressed the Director's concern, stated previously, that the Petitioner had not shown that her articles appeared in professional or major trade publications or other major media. For this reason, we agree with the Director's core conclusion that the Petitioner has not satisfied the requirements of the criterion.

Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field. 8 C.F.R. § 204.5(h)(3)(v).

The Petitioner indicated that the scholarly articles in the record include qualifying contributions. Those articles do not inherently show the significance of the contributions they describe. A petitioner can establish the major significance of published scholarly work by showing that it has "provoked widespread commentary," received notice from others working in the field, or been cited frequently by other scholars as authoritative in the field. 6 *USCIS Policy Manual*, *supra*, at F.2 appendix. Here, the Petitioner has not submitted such evidence.

The Petitioner claimed to be "listed by name as the inventor on four . . . patents," but her name is only on two of the four submitted patent certificates. As with her articles, her patents are evidence of original contributions, but the patents themselves do not contain evidence of their own significance. The Petitioner must show not only that her contributions exist, but also how those contributions affect the field at a level demonstrating major significance.

The Petitioner is one of two named inventors of a [redacted] She asserted that this patent "has won wide industry praise and attention from foreign markets." The Petitioner also stated that her "academic articles introduced many advanced

technologies in the industry," and that she set technical standards at [redacted] which "gradually became the current industry standard . . . widely used in the industry."

To support these assertions, the Petitioner submitted letters from the co-inventor of the device, the chief executive officer of [redacted] and the executive director of [redacted]. The letters identify contributions such as improvements in printing efficiency and reliability, and indicate that [redacted] was the first company to export [redacted] to Europe and the United States. The letters also indicate that the Petitioner's work addressed technical challenges of flexographic printing on [redacted].

The statements of individuals so close to the Petitioner, without further corroboration, cannot be presumed to represent a broader consensus in the field. The Petitioner did not submit objective evidence to document adoption of her methods or inventions throughout the industry, or to show that her contributions have advanced the field overall, as opposed to her companies' commercial interests.

The Petitioner stated that her companies' products meet the standards of the Forest Stewardship Council and comply with European Union timber regulations. These regulations and industry standards are already in place; compliance does not amount to an original contribution.

In the RFE, the Director asked for evidence to show how the Petitioner's contributions "impacted the field in a major and significant way." In response, the Petitioner repeated information from the initial submission and submitted new documentation showing that she drafted [redacted] "Enterprise Standards" for [redacted] in 2006. Two other paper companies in China later published similar standards – [redacted] in 2011 and [redacted] in 2012. The Petitioner asserts that the similarities demonstrate the influence of the standards she developed. We note that the 2011 standards were drafted by the individual named as co-inventor on the Petitioner's two patents. The 2012 standards do not identify their author. The documentation submitted does not establish the major significance of these standards. Also, nothing in the documents themselves establishes that [redacted] standards were largely or entirely original, rather than based on earlier work.

In the denial notice, the Director stated that the Petitioner had not shown how her contributions have major significance.

On appeal, the Petitioner states:

> [W]e have provided sufficient evidence such as [the Petitioner's] patents, publications, and testimonials from professionals in the field. All the evidence indicate[s that the Petitioner] is a leader in the field of her endeavor and has set the standard for the industry. The [Director] failed to consider and did not even mention any of [the Petitioner's] achievement[s].
>
> Since we have provided plenty of evidence and the examiner did not object, the [Petitioner] has satisfied the criterion.

The Director, however, did not disregard the Petitioner's evidence as asserted. The Director discussed the Petitioner's work, stating: "two other companies [are] using the same standards the petitioner drafted, but the petitioner did not demonstrate how these three companies using these standards impacted her field as a whole."

The Petitioner has not overcome the Director's conclusions regarding this criterion.

> *Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.* 8 C.F.R. § 204.5(h)(3)(viii).

In light of the above conclusions, the Petitioner does not meet the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3). Detailed discussion of the one remaining claimed criterion at 8 C.F.R. § 204.5(h)(3)(viii), pertaining to the Petitioner's performance in a leading or critical role for organizations or establishments that have a distinguished reputation, cannot change the outcome of this appeal. Therefore, we reserve this issue.[2]

The Petitioner has not met at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3). Therefore, the petition cannot be approved, and we need not proceed to a final merits determination. Nevertheless, another issue remains to be discussed.

B. Willful Misrepresentation of a Material Fact

The Director made a finding of willful misrepresentation of a material fact against the Petitioner, having determined that the Petitioner had submitted false evidence relating to the scholarly articles submitted in support of the petition.

A misrepresentation is an assertion or manifestation that is not in accord with the true facts. As outlined by the Board of Immigration Appeals (BIA), a material misrepresentation requires that the foreign national willfully make a material misstatement to a government official for the purpose of obtaining an immigration benefit to which one is not entitled. *See Matter of Kai Hing Hui*, 15 I&N Dec. 288, 289-90 (BIA 1975). The term "willfully" means knowing and intentionally, as distinguished from accidentally, inadvertently, or in an honest belief that the facts are otherwise. *See Matter of Healy and Goodchild*, 17 I&N Dec. 22, 28 (BIA 1979). To be considered material, the misrepresentation must be one which "tends to shut off a line of inquiry which is relevant to the alien's eligibility, and which might well have resulted in a proper determination that he be excluded." *Matter of Ng*, 17 I&N Dec. 536, 537 (BIA 1980).

U.S. Citizenship and Immigration Services (USCIS) will deny a visa petition if the petitioner submits evidence which contains false information. In general, a few errors or minor discrepancies are not reason to question the credibility of a foreign national or an employer seeking immigration benefits. *See Spencer Enters. Inc. v. U.S.*, 345 F.3d 683, 694 (9th Cir. 2003). However, if a petition includes serious errors and discrepancies, and the petitioner does not resolve those errors and discrepancies

[2] *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

given the opportunity to rebut or explain, then the inconsistencies will lead USCIS to conclude that the claims stated in the petition are not true. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

Beyond the adjudication of the visa petition, a misrepresentation may lead USCIS to enter a finding that an individual foreign national sought to procure a visa or other documentation by willful misrepresentation of a material fact. This finding of fact may lead USCIS to determine, in a future proceeding, that the foreign national is inadmissible to the United States based on the past misrepresentation, under section 212(a)(6)(C) of the Act, 8 U.S.C. § 1182(a)(6)(C).

To find a willful and material misrepresentation in visa petition proceedings, an immigration officer must determine: 1) that the petitioner or beneficiary made a false representation to an authorized official of the United States government; 2) that the misrepresentation was willfully made; and 3) that the fact misrepresented was material. *See Matter of M-*, 6 I&N Dec. 149 (BIA 1954); *Matter of L-L-*, 9 I&N Dec. 324 (BIA 1961); *Kai Hing Hui*, 15 I&N Dec. at 288.

In this case, the Director determined that Petitioner's authorship of scholarly articles is directly relevant to an eligibility criterion at 8 C.F.R. § 204.5(h)(3)(vi), and therefore any misrepresentation regarding such articles would be material to the petition. While the Director has raised questions in this regard, we conclude that the Director has not adequately justified this finding.

Most of the discussion of the Petitioner's alleged misrepresentation concerns an article which, according to the Petitioner, appeared in issue [ ] of *Modern Business Trade Industry*, in [ ] 2019. The journal's cover identifies the publication's website as http://www.xdsmgy.cn.

In the RFE, issued December 3, 2019, the Director stated: "the evidence is not credible. The website for the journal *Modern Business Trade Industry* shows the latest issue for this magazine was number [ ] but the petitioner is claiming her article was featured in issue number [ ] The Director did not identify a specific web page containing this information.

In response, the Petitioner submitted a web printout showing [ ] numbered issues of *Modern Business Trade Industry* from 2019, and another printout showing abstracts of several claimed articles, including the Petitioner's article, from issue [ ] The Petitioner stated that these materials came from "the website page of the National Knowledge Infrastructure (CNKI)" and "the official website."

In the denial notice, the Director did not address these printouts. Instead, the Director stated that, according to the website named on the magazine cover, "issue number [ ] does not exist, because this journal has been printing semi-monthly since 2008. . . . [T]he issues for [ ] were [ ] and there were only [ ] issues total for the year."

Also, the decision included new allegations not found in the RFE, based on derogatory information from outside the record of proceeding. The Director did not give the Petitioner an opportunity to rebut this information prior to the decision, as required by 8 C.F.R. § 103.2(b)(16)(i).

On appeal, the Petitioner submits photographs, with translations, of what appear to be the print edition of *Modern Business Trade Industry*, showing information translated as indicating that the magazine is published "every ten days."

Because the Director acknowledged consulting the journal's website, we visited that site as well. While the home page does refer to the publication as "bimonthly," it also shows a link to CNKI. Information found at that linked site confirms that there were [redacted] issues of *Modern Business Trade Industry* in 2019, and that the Petitioner's article appeared in issue [redacted][3] Between this online information and the photographs submitted by the Petitioner, the preponderance of the evidence supports the conclusion that the article exists, credited to the Petitioner.

Apart from the article discussed above, the Director also stated:

> A search of several websites was conducted, including Oripribe and CKNI, and they did not reveal any magazine for the ISSN number listed on the cover of Science Guide. In addition, in regards [*sic*] to the other four articles the petitioner claimed she authored, the websites Oripribe or CKNI did not reveal the issues in which the petitioner claimed her articles were published.

The Director did not provide specific web addresses that would have allowed us to repeat the searches. It is also unclear that either of the named sources are complete and comprehensive databases. This is significant because if a database is complete, then the absence of a claimed publication from that database would serve as evidence that the claimed publication does not exist. But if the database, however large, has gaps, then the absence of a claimed publication would serve only as a lack of corroboration.

Also, as above, this information was not in the RFE, and therefore the Petitioner did not have the opportunity to respond to this information before the denial was issued, as required by 8 C.F.R. § 103.2(b)(16)(i).

We withdraw the finding that the Petitioner willfully misrepresented material facts relating to her claimed publication record. There are ambiguities and deficiencies in the record, but upon consideration of the evidence submitted by the Petitioner there is not a sufficient basis for a finding of willful misrepresentation of a material fact with respect to her scholarly articles.[4]

III. CONCLUSION

The Petitioner has not submitted the required initial evidence of either a one-time achievement or documents that meet at least three of the ten lesser criteria. As a result, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. Nevertheless, we advise that we have reviewed the record in the aggregate, concluding that it does not support a conclusion that the Petitioner has established the sustained nor or international acclaim and recognition required for the classification sought.

[3] *See* https:[redacted] (visited September 1, 2022).

[4] Because the Director based the finding of willful misrepresentation solely on the information relating to the Petitioner's published articles, our contrary finding is, likewise, limited to such evidence. We take no position regarding other information that may exist outside the record of proceeding.

The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward the top. U.S. Citizenship and Immigration Services has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994). Here, the Petitioner has not shown that the recognition of her work is indicative of the required sustained national or international acclaim or demonstrates a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate that the Petitioner is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2). The record indicates that the Petitioner has had success in the printing industry, and has expanded her business by overcoming technical obstacles. But the record does not show that she has earned recognition beyond [redacted] and [redacted] in Southeast China and sustained national or international acclaim.

The Petitioner has not demonstrated eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.