U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27773464

Date: AUG. 02, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, a pastry chef, seeks classification as an alien 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 Nebraska Service Center denied the petition, concluding that the record did not establish that the Petitioner met the initial evidence requirements for the classification by submitting evidence of a one-time achievement or meeting at least three of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3). The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

To establish eligibility as an individual of extraordinary ability, a petitioner (or anyone on the petitioner's behalf) must establish that they:

- Have extraordinary ability in the sciences, arts, education, business, or athletics;
- Seek to enter the United States to continue work in their area of extraordinary ability; and that
- Their entry into the United States will prospectively substantially benefit the United States.

Extraordinary ability must be demonstrated by evidence of sustained national or international acclaim as well as extensive documentation that their achievements have been recognized in the field. Section 203(b)(1) of the Act.

The implementing regulation further states that 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." It also

sets forth a multi-part analysis. A petitioner can demonstrate international recognition of their achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If such evidence is unavailable, then they must alternatively provide evidence that meets at least three of the ten listed criteria, which call for evidence about other awards they may have received, published material about them in qualifying media, and their authorship of scholarly articles, among other types of evidence. 8 C.F.R. §§ 204.5(h)(2),(3).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination, assessing whether the record shows that the individual possesses the acclaim and recognition required for this highly exclusive immigrant visa classification. *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 is a pastry chef who intends to continue working as such in the United States.

A. Evidentiary Criteria

Because the Petitioner has not indicated or established that they received a major, internationally recognized award, they must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Director found that the Petitioner did not meet any of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). On appeal, the Petitioner asserts that they meet four evidentiary criteria.[1] After reviewing all of the evidence in the record, we conclude that the Petitioner does not meet at least three of the evidentiary criteria, and therefore does not meet the initial evidence requirements for this classification.

As explained by the Director in his request for evidence (RFE) and his decision, any document in a foreign language must be accompanied by a full English language translation. 8 C.F.R. § 103.2(b)(3). The translator must certify that the English language translation is complete and accurate, and that the translator is competent to translate from the foreign language into English. *Id.* Because the Petitioner did not submit a properly certified English language translation of any of the foreign language documents in the record, we cannot meaningfully determine whether the translated material is accurate and thus supports the Petitioner's claims.

> *Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.* 8 C.F.R. § 204.5(h)(3)(iii)

[1] The Petitioner does not reassert her claim to meet the criterion at 8 C.F.R. § 204.5(h)(3)(x) relating to commercial success in the performing arts. We consider this issue to be abandoned. *See Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005); *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (the court found the plaintiff's claims to be abandoned as he failed to raise them on appeal to the AAO).

The Petitioner submitted an article posted to the website of a television station reporting on news in [redacted] Russia, www[redacted] The article consists of an interview of the Petitioner about her training and work as a pastry chef in the United States. In his decision, the Director first noted that this article, which was submitted in English, was not accompanied by a certification from a translator. In addition, the Director noted that this material was not accompanied by evidence that this website qualifies as either a professional or major trade publication or other major media. Evidence of published material in professional or major trade publications or in other major media publications about the Petitioner should establish that the circulation (on-line or in print) is high compared to other circulation statistics and show who the intended audience of the publication is, as well as the title, date and author of the material. *See generally* 6 *USCIS Policy Manual* F.2, Appendices Tab.

On appeal, Petitioner's counsel refers to the RFE response, in which he referred to site traffic statistics about the www[redacted] website claimed to have been obtained from the website of SimilarWeb Ltd. However, assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988) (citing *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980)). Counsel's statements must be substantiated in the record with independent evidence, which may include affidavits and declarations. Here, the record lacks such evidence. As the Petitioner submitted no other evidence to support her claim that the website qualifies as a professional or major trade publication or other major media, we agree with the Director's conclusion that she has not shown that she meets this 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)

In order to satisfy the regulation at 8 C.F.R. § 204.5(h)(3)(v), a petitioner must establish that not only have they made original contributions, but that those contributions have been of major significance in the field. For example, a Petitioner may show that the contributions have been widely implemented throughout the field, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance. *See Visinscaia*, 4 F. Supp. 3d at 134-35.

The Petitioner submitted several letters from her former employers which generally praised her work, but which the Director concluded were insufficient to show that she meets this criterion. In her appeal, the Petitioner asserts that the Director did not adequately consider this evidence. We disagree. The Director reviewed each of the letters in his decision and explained that none of them showed that the Petitioner had made a contribution of major significance to the field of pastry and chocolate preparation and cooking. In her brief, the Petitioner points to a letter from her most recent employer stating that the newest items on the restaurant's dessert menu are her creations, but she does not explain or refer to evidence showing that this contribution to her employer's dessert menu was of major significance to her field. *See Amin v. Mayorkas*, 24 F.4th 383, 393-394 (5th Cir. 2022) (finding that contributions which were not adopted beyond a petitioner's employer do not meet this criterion). As explained by the Director, the other letters similarly describe the Petitioner's work in a positive light, but do not suggest that her work remarkably impacted or influenced other pastry chefs. We therefore agree with the Director and conclude that this evidence is insufficient to establish that the Petitioner meets this criterion.

B. Final Merits Determination

The Petitioner has not established that she meets at least three of the evidentiary criteria, and thus does not meet the initial evidentiary requirement for classification as an individual of extraordinary ability. Although she claims eligibility for two additional criteria on appeal, relating to a leading or critical role for organizations with a distinguished reputation at 8 C.F.R. § 204.5(h)(3)(viii) and a high salary or other significantly high remuneration relative to others in the field at 8 C.F.R. § 204.5(3)(3)(ix), we need not reach these additional grounds. As the Petitioner cannot fulfill the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3), we reserve these issues.[2] Accordingly, 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 finding that the Petitioner has established the acclaim and recognition required for the classification sought.

The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for those progressing toward the top. USCIS 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 significance of their work is indicative of the required sustained national or international acclaim or that it is consistent with 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 has garnered national or international acclaim in the field, and that they are one of the small percentage who have 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).

ORDER: The appeal is dismissed.

[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).