U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 24734448

Date: FEB. 9, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, a figure skating choreographer and coach, 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 Nebraska Service Center Director denied the Form I-140, Immigrant Petition for Alien Workers (petition), concluding that the Petitioner did not establish that she received a major, internationally recognized award, nor did she demonstrate that she met at least three of the ten regulatory criteria. The matter is now before us on appeal. The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (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 qualify under this immigrant classification, the statute requires the filing party demonstrate:

- The foreign national enjoys extraordinary ability in the sciences, arts, education, business, or athletics;
- They seek to enter the country to continue working in the area of extraordinary ability; and
- The foreign national's entry into the United States will substantially benefit the country in the future.

Section 203(b)(1)(A)(i)–(iii) of the Act. 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 these initial evidence requirements, 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 Amin v. Mayorkas*, 24 F.4th 383, 394 (5th Cir. 2022).

II. ANALYSIS

The Petitioner has performed as a figure skating competitor and intends to work as a coach and choreographer for figure skaters. She attained her foreign bachelor's degree in physical education and began coaching one year after receiving her degree.

A. Translation Certifications

The Petitioner initially provided several foreign language documents that were accompanied by translations. The regulation at 8 C.F.R. § 103.2(b)(3) states: "Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English."

The Director issued a request for evidence (RFE) notifying the Petitioner that "[s]everal documents were submitted as evidence, but they were not accompanied by a certified English translation in accordance with 8 CFR § 103.2(b)(3) and will not be considered probative. Review of the evidence revealed the translations do not contain the required language in 8 CFR § 103.2(b)(3)." The translation certifications she initially provided were lacking any indication each document was certified as complete and accurate. Also absent was the translator's certification that they are competent to translate from the foreign language into English.

When she responded to the RFE, the Petitioner provided certified translations for the documents that she submitted with the RFE that appears to comply with the regulation. However, she did not provide certified translations for the foreign language materials she submitted when she filed the petition. In other words, the initial evidence does not have compliant certifications, but the RFE response documentation does. As a result, any initially submitted foreign language evidence carries significantly reduced evidentiary value and will not serve as probative to the Petitioner's claims. This could explain the issue the Petitioner raises on appeal, that the Director accepted her evidence relating to judging the work of others and granted that criterion, but found the evidence for other criteria was not accompanied by adequate translation certifications.[1]

[1] The Director's RFE indicated the evidence appeared to show she met this criterion, but the evidence was not accompanied

B. Evidentiary Criteria

Because the Petitioner has not indicated or established that she has 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). Before the Director, the Petitioner claimed she met seven of the regulatory criteria. The Director decided that the Petitioner satisfied the criterion relating to judging, and we do not disagree with that conclusion. But the Director also determined that she had not satisfied the criteria associated with:

- Membership;
- Published material;
- Original contributions;
- Authorship of scholarly articles; and
- Display of the her work.

The Petitioner also claimed she met the high salary criterion, but the Director did not address those claims. After reviewing all the evidence in the record, we conclude the Petitioner has not demonstrated eligibility for this highly restrictive immigrant classification.

> *Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.* 8 C.F.R. § 204.5(h)(3)(ii).

This criterion contains several evidentiary elements the Petitioner must satisfy. First, the Petitioner must demonstrate that she is a member of an association in her field. Second, the Petitioner must demonstrate both of the following: (1) the associations utilize nationally or internationally recognized experts to judge the achievements of prospective members to determine if the achievements are outstanding, and (2) the associations use this outstanding determination as a condition of eligibility for prospective membership.

Because the Petitioner's foreign language evidence she initially submitted does not comply with the regulation for such material and it is not probative, we will not address any of that content unless the Petitioner remedied that shortcoming in her RFE response or on appeal. The Director first noted some of the Petitioner's evidence was subject to this translation deficiency. The Director further noted the lack of reliability relating to evidence originating from *Wikipedia*. Next the Director took issue with the context of the memberships, as they appeared to be relating to her time as a competitor but not as a skating coach and choreographer. Additionally, the Director noted the Petitioner did not establish that the associations require outstanding achievements of their members. And finally, they found that the record lacked bylaws for the groups or other evidence of membership requirements to show the requisite level of achievement are a condition of membership.

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by a proper translation. The Director appears to have accepted her additional RFE evidence as sufficiently remedying any reservations they had, and they granted that criterion.

On appeal, the Petitioner addresses some of these elements, but she does not remedy the lack of material relating to membership requirements for any association she claimed. The regulation informed the Petitioner of this requirement, the Director requested this type of material in the RFE, and they also placed the Petitioner on notice of the need to show membership requirements and she still has not provided the documentation. We will not presume exclusive membership requirements from the general reputation of a given association, as the association's reputation may derive from various unrelated factors independent of the exclusive nature of its membership. Because the record does not contain the bylaws or other official documentation of the association's membership criteria, we cannot evaluate whether the Petitioner's membership claims are qualifying. Thus, the Petitioner has not established that she meets the requirements of this criterion.

> *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).

This criterion contains multiple evidentiary elements the Petitioner must satisfy through the submission of evidence. The first is that the Petitioner is an author of scholarly articles in her field in which she intends to engage once admitted to the United States as a lawful permanent resident. We consider these articles within two distinct areas. The first area is within the academic arena in which a scholarly article reports on original research, experimentation, or philosophical discourse. It is written by a researcher or expert in the field who is often affiliated with a college, university, or research institution. In general, it should have footnotes, endnotes, or a bibliography, and may include graphs, charts, videos, or pictures as illustrations of the concepts expressed in the article.

The second area lies outside of the academic arena in which a scholarly article should be written for learned persons in that field. "Learned" is defined as "having or demonstrating profound knowledge or scholarship." Learned persons include all persons having profound knowledge of a field. *See generally* 6 *USCIS Policy Manual* F.2 (Appendices), https://www.uscis.gov/policymanual.

The second element this criterion requires is that the scholarly articles appear in one of the following: (1) a professional publication, (2) a major trade publication, or (3) in a form of major media. Regarding the medium in which the articles appear, the Petitioner should establish that the publication's circulation statistics are high relative to similar publications and should also establish the publication's intended audience. *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2 (Appendices). The Petitioner must submit evidence satisfying each of these elements to meet the plain language requirements of this criterion.

The Petitioner provided an article titled [redacted]. The article was posted on the website championat.com in [redacted] 2021. The Director determined that the Petitioner did not meet the requirements of this criterion. As the Petitioner operates outside of academia, she should demonstrate the article was written for learned persons in the field. The article does not meet this requirement as it appears intended for those who do not compete in her athletic field, and she offers no arguments to the contrary. As the Petitioner has not shown this evidence qualifies as a scholarly article, it would serve no purpose to evaluate whether it appeared in a qualifying publication.

Consequently, the Petitioner has not submitted evidence that meets this criterion's requirements.

Evidence of the display of the alien's work in the field at artistic exhibitions or showcases. 8 C.F.R. § 204.5(h)(3)(vii).

The Petitioner claimed this criterion before the Director but offers no rebuttal of the adverse determination on appeal. We consider the claims under this criterion to be abandoned within these proceedings. *See Matter of Mariscal-Hernandez*, 28 I&N Dec. 666, 672 (BIA 2022) (finding arguments not raised on appeal are abandoned).

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field. 8 C.F.R. § 204.5(h)(3)(ix).

Because the Petitioner's foreign language evidence she initially submitted does not comply with the regulation for such material and it is not probative, we will not address any of that content unless the Petitioner remedied that shortcoming in her RFE response or on appeal. The Director did not directly address these claims in their denial decision. In the appeal, the Petitioner claims her work for two weeks at a 2019 summer camp. She provided her contract for this work reflecting a payment for 361,200 Russian Rubles. We note the Petitioner characterizes these two weeks of work as a salary, but it appears to be more appropriately considered as remuneration, which must be "significantly high . . . in relation to others in the field." As evidence in which to compare with this remuneration, the Petitioner's appeal identifies salaries as listed on a hiring website.

Foreign persons who do not earn an annual salary and instead receive earnings on a contract or project basis should provide sufficient evidence to allow a calculation of their past earnings over a definite period of time. For example, submission of evidence such as a director of photography's earnings from a single television commercial or an artist's earnings from the sale of a single painting is usually not sufficient to meet a petitioner's burden under this criterion. Here, remuneration illustrating two weeks of earnings falls short of meeting the Petitioner's burden of proof. Because the record contains insufficient evidence of the Petitioner's past compensation, it is unnecessary that we proceed with an analysis of whether her claimed remuneration was significantly high in relation to others in the field.

The Petitioner has not submitted evidence that meets the plain language requirements of this criterion.

We conclude that although the Petitioner claims she meets six criteria, because her arguments fail on any of the four criteria discussed above, that means she cannot numerically meet the required number of criteria and it is unnecessary for us to reach a decision on her other claimed elements. As the Petitioner cannot fulfill the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3), we reserve our evaluation of those requirements under the published material and contributions criteria. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (finding it unnecessary to analyze additional grounds when another independent issue is dispositive of the appeal); *see also Matter of D-L-S-*, 28 I&N Dec. 568, 576–77 n.10 (BIA 2022) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

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 criteria. As a result, we do not need to 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 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 individuals progressing toward that goal. 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 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). Moreover, the record does not otherwise demonstrate that the Petitioner has garnered national or international acclaim in the field, and they are one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) and 8 C.F.R. § 204.5(h)(2).

For the reasons discussed above, the Petitioner has not demonstrated their eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.