U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22602740

Date: FEB. 14, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, a tech author, journalist, and educator, 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 Nebraska Service Center denied the petition, concluding that the record did not establish the Petitioner met the initial evidence requirements for the classification by establishing her receipt of a major, internationally recognized award or by meeting three of the ten 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

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 contends that her field of extraordinary ability is technology-focused journalism with a focus on "tecklash" (backlash to technology), and she wrote a book geared toward academics that "examines the history and the powershifts and uncovers the root cause of the backlash against Big Tech." She also has made research findings regarding the impact of tech companies and how they should be regulated, and her tech journalism delves into issues related to the tech ecosystem. She last arrived in the United States in 2021 as an L-2 nonimmigrant, and she is a visiting research fellow at the University of [redacted] School for Communication and Journalism. The Petitioner contends she has more than a decade of leadership in tech journalism and works as a teacher, lecturer, and journalist.

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 claims to have satisfied three 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; and
- (v), Original contributions of major significance.

The Director concluded that the Petitioner met two of the criteria, pertaining to published material about the individual in professional or major media and judging the work of others. On appeal, the Petitioner asserts that her evidence satisfies the applicable legal requirements to satisfy the other claimed criteria.

Upon review of the record, we will not disturb the Director's determination regarding the Petitioner's published material about the individual in professional or major media and her participation as a judge. For the reasons discussed below, we agree with the Director that the Petitioner has not satisfied the other claimed criterion.

A. Evidentiary 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 primary requirements here are that the Petitioner's contributions in their field were original and they rise to the level of major significance in the field as a whole, rather than to a project or to an

organization. *Amin v. Mayorkas*, 24 F.4th 383, 394 (5th Cir. 2022) (citing *Visinscaia*, 4 F. Supp. 3d at 134. The regulatory phrase "major significance" is not superfluous and, thus, it has some meaning. *Nielsen v. Preap*, 139 S. Ct. 954, 969 (2019) (finding that every word and every provision in a statute is to be given effect and none should needlessly be given an interpretation that causes it to duplicate another provision or to have no consequence). Further, the Petitioner's contributions must have already been realized rather than being potential, future improvements. Contributions of major significance connotes that the Petitioner's work has significantly impacted the field. The Petitioner must submit evidence satisfying all of these elements to meet the plain language requirements of this criterion.

In her initial submission, the Petitioner submitted evidence of her: (1) participation in peer-reviewed conferences, together with copies of academic papers presented; and (2) academic and business speaking engagements, comprised of invited lectures, keynote address and guest lectures in seminars.

In a request for evidence, the Director acknowledged the evidence submitted by the Petitioner but noted that evidence did not establish original contribution of major significance. In response to the Director's request for evidence, the Petitioner submitted a letter from [redacted] of Journalism Innovation and Director of the [redacted] of Journalism, the City [redacted] Professor [redacted] stated in his letter he met the Petitioner when she contacted him while researching for her book and was "immensely impressed with her grasp of her subject, the thoroughness of her research, and the insight in her conclusion, which confirmed a shift in media coverage in technology – from practically utopian to nearly dystopian – that I had merely sensed." He also noted that he recommended her book often, convinced his podcast co-hosts to have her on as a guest for an entire episode, and recommended her to other media outlets for her reporting and commentary. He said that she will bring "invaluable evidence and perspective to policymakers in government and journalists in media." He also stated, "without equivocation that she is unique in the field and brings critically important contributions to it."

The Petitioner also submitted an article that outlined the statement Professor [redacted] made to the Senate Judiciary Subcommittee on [redacted] whereby he urged the committee to read the Petitioner's book. The Petitioner claims that a testimonial and Senate statement by a world-renowned thought leader on the future of the news business who met the Petitioner in the course of her research is objective evidence that this criterion is satisfied.

The Petitioner also submitted a letter from [redacted] Director, USC Center for Public Relations, [redacted] for Communication and Journalism, confirming that the Petitioner began her research fellowship at the University of [redacted] in 2017. He stated that the Petitioner's "tech background and understanding of cutting-edge innovation proved tremendously beneficial." He also stated that she made a significant contribution with her concept of tech crisis communication and her "analytical skills and findings add valuable data to one of the most debated issues in the U.S. and abroad."

The Petitioner contends her work has considerable influence on the field of tech journalism and is "reflected by the measurable increase in the level of discourse arising from her contributions." She said she is a prolific writer and sought-after speaker and commentator in a large range of tech-journalism fora, and she has independent and creative thought. The Petitioner reiterates her participation in peer-reviewed

conferences, invited lectures and conference and guest lectures at seminars and academic colloquia in the field of tech journalism, and invitations to review academic papers.

The Director determined that the Petitioner did not establish eligibility for this criterion. On appeal, the Petitioner contends the Director erred when he stated that Professor [redacted] managed, employed, instructed, worked with or collaborated with the Petitioner. However, the letter from Professor [redacted] stated that the Petitioner first contacted him in the course of her research, which culminated in her book and therefore it could be possible that the Petitioner and Professor [redacted] collaborated in the book's writing. The Petitioner did not provide more information of her working relationship with Professor [redacted] We will review the letter and discuss it below.

The Petitioner contends that she submitted two testimonial letters that describe her original contributions to the field of tech journalism. The letters, however, do not contain detailed, specific information explaining how the Petitioner's leadership resulted in original contributions of major significance in the field; instead, the letters make broad statements. For instance, Professor [redacted] stated that he was "immensely impressed with her grasp of her subject, the thoroughness of her research, and the insight in her conclusion," and she will bring "invaluable evidence and perspective to policymakers in government and journalists in media." These are vague and general statements and do not provide a true understanding of an original contribution of major significance. In addition, while it is commendable that Professor [redacted] recommended the Petitioner's book to the Senate Judiciary Subcommittee on [redacted] this does not provide evidence that her book presents an original contribution of major significance. Books can be recommended for many reasons such as ease for understanding a complex topic or for educational purposes but not necessarily proof of an original contribution of major significance. Furthermore, the testimonial from [redacted] is also general and does not provide enough information to corroborate the general statements. For example, he states that the Petitioner made a significant contribution to my field with her concept of tech crisis communication but does not go into detail of how he came to that determination.

The Petitioner's letters do not contain specific, detailed information explaining the unusual influence or high impact her leadership has had on the overall field. Letters that specifically articulate how a petitioner's contributions are of major significance to the field and its impact on subsequent work add value.[1] On the other hand, letters that lack specifics and use hyperbolic language do not add value and are not considered to be probative evidence that may form the basis for meeting this criterion.[2] Moreover, United States Citizenship and Immigration Services (USCIS) need not accept primarily conclusory statements. *1756, Inc. v. The U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.C. Dist. 1990).

For the reasons discussed above, considered both individually and collectively, the Petitioner has not shown that she has made original contributions of major significance in the field.

In addition, the record contains evidence the Petitioner spoke at several peer-reviewed conferences and served as a panelist at conventions and seminars. However, the Petitioner did not show how her

[1] *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8-9.

[2] *Id.* at 9. *See also Kazarian*, 580 F.3d at 1036, aff'd in part 596 F.3d at 1115 (holding that letters that repeat the regulatory language but do not explain how an individual's contributions have already influenced the field are insufficient to establish original contributions of major significance in the field).

speaking and panelist engagements resulted in contributions of major significance in the field. She did not demonstrate, for example, that her participation or contribution to the events influenced the field in a significant, major manner. Publications and presentations are not sufficient under 8 C.F.R. § 204.5(h)(3)(v) absent evidence that they were of "major significance." *See Kazarian v. USCIS,* 580 F.3d 1030, 1036 (9th Cir. 2009), *aff'd in part*, 596 F.3d 1115. While the Petitioner asserts that the significance of her contribution is reflected by their measurable increase to the level of discourse in the field, the record does not evidence of reporting of her conferences and seminars.

For the reasons stated above, the Petitioner does not meet this criterion.

B. Reserved Issues

Based on the foregoing discussion, we agree with the Director's determination that the Petitioner has not met at least three of the ten initial evidentiary criteria for this classification, as required. Since the identified basis for denial is dis positive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding whether he seeks "to enter the United States to continue work in the area of extraordinary ability" and whether his entry "will substantially benefit prospectively the United States," under section 203(b)(1)(A)(ii)-(iii) of the Act. See *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is 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).

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. We also need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20, or render a determination on the issue of whether the Petitioner's entry will substantially benefit prospectively the United States. Accordingly, we reserve these issues.[3]

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 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 those progressing toward the top. *Price*, 20 I&N Dec. at 954 (Assoc. Comm'r 1994) (concluding that even major league level athletes do not automatically meet the statutory standards for classification as an individual of "extraordinary ability,"); *Visinscaia*, 4 F. Supp. 3d at 131 (internal quotation marks omitted) (finding that the extraordinary ability designation is "extremely restrictive by design,"); *Hamal v. Dep't of Homeland Sec. (Hamal II)*, No. 19-cv-2534, 2021 WL 2338316, at *5 (D.D.C. June 8, 2021) (determining that EB-1 visas are "reserved for a very small percentage of prospective immigrants"). *See also Hamal v. Dep't of Homeland Sec. (Hamal I)*, No. 19-cv-2534, 2020 WL 2934954, at *1 (D.D.C. June 3, 2020)

[3] *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, n.7 (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

(citing *Kazarian,* 596 at 1122 (upholding denial of petition of a published theoretical physicist specializing in non-Einsteinian theories of gravitation) (stating that "[c]ourts have found that even highly accomplished individuals fail to win this designation")); *Lee v. Ziglar*, 237 F. Supp. 2d 914, 918 (N.D. Ill. 2002) (finding that "arguably one of the most famous baseball players in Korean history" did not qualify for visa as a baseball coach). Here, the Petitioner has not shown that the significance of her 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 she 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 does not contain sufficient evidence establishing that she is among the upper echelon in her field.

For the reasons discussed above, the Petitioner has not demonstrated her 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.