U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 25675707

Date: MAR. 6, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a professor, 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 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 is the coordinator of the English language pathways at [redacted] Community College [redacted] awarded the Petitioner with its excellence in teaching award in 2022, and she was nominated for the [redacted] Community College System's excellence in teaching award. 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:

- (iv), Participation as a judge of the work of others in the same of allied field
- (vi) Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media
- (viii), Leading or critical role for distinguished organizations or establishments

The Director concluded the Petitioner met the criterion of judging the work of others in the same or allied field. On appeal, the Petitioner asserts that her evidence satisfies the applicable legal requirements to satisfy the other claimed criteria.

We will not disturb the Director's determinations regarding the criterion met by the Petitioner. And on appeal, we conclude that record also demonstrates the Petitioner's authorship of numerous scholarly articles in the education field. The Petitioner has therefore satisfied two criteria and must satisfy one more to prevail. As discussed below, we conclude she has not.

A. Evidentiary Criteria

> *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).

To meet the plain language requirements of this criterion, a petitioner must establish that they have performed in either a leading or critical role, and that the role has been for an organization or establishment (or a division or department of an organization or establishment) having a distinguished reputation. A leading role should be apparent by its position in the overall organizational hierarchy and through the role's matching duties. A title, with appropriate matching duties, can help to establish if a role is or was, in fact, leading. *See generally 6 USCIS Policy Manual* F.2(B)(2)(Appendices), https://www.uscis.gov/policymanual. If a critical role, the evidence must establish that a petitioner has contributed in a way that is of significant importance to the outcome of the organization or establishment's activities. It is not the title of the petitioner's role, but rather the petitioner's

performance in the role that determines whether the role is or was critical. In addition, this criterion requires that the organization or establishment be recognized as having a distinguished reputation. USCIS policy reflects that organizations or establishments that enjoy a distinguished reputation are "marked by eminence, distinction, or excellence." *See generally* 6 *USCIS Policy Manual*, *supra*, F.2. (citing to the definition of *distinguished*, *Merriam-Webster*, https://www.merriam-webster.com/dictionary/distinguished). The Petitioner must submit evidence satisfying all of these elements to meet the plain language requirements of this criterion.

Letters from employers, attesting to an employee's role in the organization, must contain detailed and probative information that specifically addresses how the person's role for the organization or establishment was leading or critical. *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2 appendix. The Petitioner's do not.

The Petitioner submitted a letter from [redacted] Director of English for Academic Purposes and Continuing Education of Non-Native English Speakers at [redacted] who stated the Petitioner led a leading and critical role. [redacted] confirmed the Petitioner commenced employment at [redacted] in 2018 and within two years her "leadership abilities stood out" and she was promoted to the position of Coordinator of English Language Pathways. In this position, the Petitioner is "in charge of all of the English continuing education classes as it relates to curriculum development, judging teacher's learning management sites, their completion of tasks, and their classroom management." [redacted] explained that the Petitioner is at a "top position within the department." She also stated the Petitioner is the only person in the college that has a doctorate in teaching English to speakers of other languages and her "expertise in this field is of eminent value." [redacted] further indicated that due to the Petitioner's "innovations within the curriculum, choice of courses, and individual outreach to students," enrollment into her program increased by 30 percent from the prior year. [redacted] explained that higher enrollment in the program is directly connected to program funding. Further, she noted the Petitioner's judgement and training led to a higher caliber of teachers for that department.

On appeal, the Petitioner contends she plays a leading and critical role at [redacted] as noted in the letter from [redacted] and by her achievement of earning the award of excellence in teaching from [redacted] Although [redacted] confirms the importance of the Petitioner's contributions as the coordinator of English language pathways at [redacted] she does not establish that she performed a leading or critical role for [redacted] as a whole, such as by showing she influenced its overall reputation or status, or was responsible for the success of the organization. Though [redacted] stated that due to the Petitioner's efforts, enrollment in her program increased by 30 percent from the prior year, it is not clear from the record that the Petitioner's actions and contributions in fact led to the increase. Increase in enrollment could be caused by several different factors, and without more information it is impossible to correlate the increase to the Petitioner's actions and not some other factor such as changes in the pandemic and students returning to campuses, or any other possible factors. While the Petitioner worked on projects to enhance [redacted] program, and thereby supported its mission, she did not provide sufficient documentary evidence to show that her duties and responsibilities as a coordinator of the English language pathways were critical to the greater organization. The Petitioner did not sufficiently explain or demonstrate that her role as a coordinator for one program out of several departments in a college constitutes a critical or leading role for the overall organization.

[redacted] does not describe with sufficient detail how the Petitioner played a critical role or leading role in the successes enjoyed of [redacted] Although [redacted] stated that the Petitioner's innovations within the curriculum and choice of courses contributed to higher enrollment and funding for the program, she did not provide specific examples. Further, while she stated the Petitioner used her expertise to obtain a higher caliber of teachers, these accolades do not demonstrate that her position amounts to a leading or critical role. Every employee fulfills some kind of role that benefits their employer in some way. Here, the Petitioner has not established that her work for the college was critical to the organization itself, rather than to the outcome of specific, limited tasks or projects.

On appeal, the Petitioner further contends that [redacted] is a distinguished institution of prominence and eminency in the State of North Carolina. As the Petitioner has not established that she performed in a critical or leading role for [redacted] however, further analysis of the college's reputation serves no meaningful purpose.

In summary, the evidence provided does not sufficiently demonstrate the petitioner performed in a leading or critical role for organizations or establishments that have a distinguished reputation. The letter considered above primarily contain bare assertions of acclaim and vague claims of contributions without specifically identifying contributions and providing specific examples of how those contributions rise to a level consistent with major significance in the field. Merely repeating the language of the statute or regulations does not satisfy the Petitioner's burden of proof. *See Fedin Bros. Co., Ltd. V. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). Similarly, USCIS need not accept primarily conclusory assertions. *See 1756, Inc. v. The U.S. Att'y Gen.*, 745 F. Supp. At 17.

For these reasons, the Petitioner has not established that she meets 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 See generally 6 USCIS Policy Manual, supra*, at F.2(B)(2) appendix.

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 contends she qualifies for this criterion based on two scholarly articles she wrote that were published in books. The books were published by [redacted] press, imprint of the higher colleges of technology. The Director found that she had not established that her articles were published in a professional or major trade publication or other major media. On appeal, the Petitioner states her previously-submitted evidence demonstrates her eligibility for this criterion. The record includes a copy of the Beneficiary's articles, which indicate that they are scholarly in nature. We therefore find that the Beneficiary published her articles in a professional publication and withdraw the Director's finding to the contrary. However, because the Petitioner only met two of the required three evidentiary criteria, she does not overcome the denial decision.

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.[1]

Nevertheless, we have reviewed the record in the aggregate and concluded 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) (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

[1] *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).

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.