U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22642954

Date: MAR.29, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a fashion designer, 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 met the initial evidentiary requirements through 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

Section 203(b)(1)(A) of the Act makes visas available to immigrants with extraordinary ability if:

> (i) the alien has 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,
>
> (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
>
> (iii) the alien's 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 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 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). This two-step analysis is consistent with our holding that the "truth is to be determined not by the quantity of evidence alone but by its quality," as well as the principle that we examine "each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true." *Matter of Chawathe,* 25 I&N Dec. at 376.

II. ANALYSIS

Because the Petitioner has not indicated or established that she has received a major, internationally recognized award at 8 C.F.R. § 204.5(h)(3), she must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x).

In denying the petition, the Director determined that the Petitioner fulfilled one criterion regarding display at 8 C.F.R. § 204.5(h)(3)(vii). On appeal, the Petitioner maintains that she meets four additional criteria, either directly or indirectly through comparable evidence. After reviewing all the evidence, the record does not reflect that the Petitioner satisfies the requirements of at least three criteria.[1]

> *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 contends that because "[f]ashion [d]esigners are not researchers or experts in the field that are affiliated with colleges, universities or research institutions[,] this criterion does not readily apply to the occupation." However, this criterion is not as limiting as the Petitioner asserts. Outside of the academic arena, a scholarly article should be written for "learned" persons in the field[2] and may appear "in professional or major trade publications or other major media." As the Petitioner has not

[1] While we do not discuss each piece of evidence in the record individually, we have reviewed and considered each one.
[2] "'Learned' is defined as having or demonstrating profound knowledge or scholarship." *See* 6 *USCIS Policy Manual* F.2(B)(2). https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-2.

established that this criterion does not apply to her profession, we cannot consider comparable evidence.

The record contains documentation of the Petitioner's video presentation at the 2020 [redacted] regarding "what to look for when buying children's wear." The presentation was given to a general audience, specifically Spanish speaking fashion lovers, not "learned" persons in the field. In addition, the Petitioner has not demonstrated that the presentation qualifies as major media.

For the reasons above, the Petitioner has not met 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 order to meet this criterion, the Petitioner must establish that she not only played a leading or critical role, but also that the organization or establishment for which she played that role is recognized as having a distinguished reputation. 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.merriamwebster.com/dictionary/distinguished).

The Petitioner points to published articles about her company and that of [redacted] Collection to establish their distinguished reputation. However, the Petitioner has not sufficiently established how appearing in these newspapers demonstrates the distinguished reputation of either her company or [redacted] Collection. While the accompanying articles are complimentary and the evidence establishes the newspapers' circulation statistics, it does not sufficiently demonstrate that either of the companies are marked by eminence, distinction, or excellence. For example, the Petitioner has not submitted evidence to indicate that the newspapers only publish material about organizations with a distinguished reputation. Without more, we cannot conclude that the Petitioner meets this criterion.

> *Evidence of the alien's commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.* 8 C.F.R. § 204.5(h)(3)(x).

The Petitioner asserts that this criterion does not readily apply to her occupation and that we should consider sales of her designs as comparable evidence. We agree. However, the burden is on the Petitioner to establish that the documentation submitted is indeed comparable to the evidence that would meet this criterion.

The Petitioner cites to USCIS Policy Memorandum PM-602-0005.1, *Evaluation of Evidentiary Criteria in Certain Form I-140 Petitions,* (Dec. 22, 2010) which states, in pertinent part, that "[t]he evidence must show that *the volume of sales and box office receipts reflect the alien's commercial success relative to others involved in similar pursuits* in the performing arts" (emphasis added). While the record establishes that she sells her designs in stores, it does not demonstrate that the volume of her sales reflects her success relative to other fashion designers. Therefore, the Petitioner has not established that she meets this criterion through comparable evidence.

While the Petitioner asserts that she meets one additional criterion relating to published material at 8 C.F.R. § 204.5(h)(3)(iii), it is unnecessary for us to reach a decision on this additional ground because she cannot meet the required number of three criteria. As the Petitioner cannot fulfill the initial evidentiary requirement under 8 C.F.R. § 204.5(h)(3), we reserve this issue. *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).

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 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 individuals progressing toward the top. *See Matter of Price*, 20 I&N Dec. at 954 (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")).

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)(l)(A) of the Act. Moreover, the record does not otherwise demonstrate that the Petitioner has garnered sustained 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).

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.