U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 24228176

Date: MAR. 29, 2023

Appeal of Texas Service Center Decision

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

The Petitioner seeks classification on behalf of the Beneficiary 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 the record did not establish that the Beneficiary qualifies as an individual of extraordinary ability either as the recipient of a one-time achievement that is a major, internationally recognized award, or at least three of the ten regulatory criteria listed at 8 C.F.R. § 204.5(h)(3)(i) – (x). 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) 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 the petitioner 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).

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).

II. ANALYSIS

The Beneficiary is a Spanish language instructor who uses various forms of art to teach foreign languages. The Petitioner stated that the Beneficiary's superior teaching abilities positioned her in leading and critical roles teaching Spanish at top universities in the United States, including [redacted] University, [redacted] University, [redacted] University, and [redacted] University. While we do not discuss each piece of evidence, we have reviewed and considered each one.

A. Evidentiary Criteria

Because the Petitioner has not indicated or established that the Beneficiary received a major, internationally recognized award, the Beneficiary must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i) – (x). The Petitioner initially claimed the Beneficiary met six criteria, summarized below:

- (i), Lesser nationally or internationally recognized prizes or awards;
- (iii), Published material about the alien in professional or major media;
- (iv), Participation as a judge of the work of others in the same or allied field;
- (v), Original contributions of major significance;
- (vi), Authorship of scholarly articles; and
- (viii), Performing a leading or critical role for distinguished organizations.

The Director found the Beneficiary met the criteria relating to judging the work of others and performing in a leading or critical role for distinguished organizations, but that the Beneficiary had not satisfied the criteria associated with prizes of awards, published material, original contributions, or authorship of scholarly articles. The Petitioner maintains the Beneficiary meets each of the other criteria in which the Director found in the negative. Upon review, we agree with the Director that the Beneficiary has satisfied the judging of others and the performing in a leading or critical role criteria.

For the reasons discussed below, we agree with the Director that the Beneficiary has not satisfied the other claimed criteria.

> *Documentation of the individual's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.* 8 C.F.R. § 204.5(h)(3)(i)

In order to satisfy this criterion, the Petitioner must demonstrate the Beneficiary received lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.[1] Relevant considerations regarding whether excellence in the field was the basis for granting the prizes or awards include, but are not limited to: the criteria used to grant the awards or prizes, the national or international significance of the awards or prizes in the field, and the number of awardees or prize recipients as well as any limitations on competitors.[2]

On appeal, the Petitioner contends the Beneficiary met the criteria relating to prizes or awards as the recipient of the Exceptional Teaching Impact and Motivation Student Voice Award (EXTIMO), awarded to her by the [redacted] chapter of the American Association of Teachers of Spanish and Portuguese (AATSP). The Director noted that the letter written by the President of the AATSP, [redacted] Chapter, stated this award recognizes the top-most inspiring Spanish/Portuguese teachers in middle schools, high schools, and universities in each AATSP chapter. The Director concluded the EXTIMO award from the [redacted] chapter was a regional award rather than a national or international recognition.

On appeal, the Petitioner states that although the EXTIMO is awarded by each chapter, the association has 10,000 members across the United States and is therefore a nationally recognized award. However, the organization's national membership is not sufficient evidence to overcome the letter's statement that the Beneficiary received the award for recognition of her work in the [redacted] chapter. The Petitioner did not provide sufficient evidence on appeal to overcome the Director's concerns and indicate the EXTIMO award granted at a local chapter level is recognized nationally.

In addition, absent information regarding, for example, the number of competitors in the Petitioner's age category, or evidence of the level of recognition associated with this award, we cannot find that the Beneficiary has satisfied each element of the criterion. The record lacks sufficient evidence verifying that prizes and awards issued by this competition are nationally or internationally recognized awards for excellence in the field, or evidence that the Beneficiary herself received any recognition from outside the issuing organization.

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

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[1] See USCIS Policy Memorandum PM 602-0005.1, Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator's Field Manual (AFM) Chapter 22.2, AFM Update AD11-14 6 (Dec. 22, 2010), https://www.uscis.gov/policymanual/HTML/PolicyManual.html.

[2] *Id.* (indicating that an award limited to competitors from a single institution, for example, may have little national or international significance).

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).

Under this criterion, an individual must show that published material was about them and related to their work in the field and did not just focus on their employer or another organization. In addition, an individual must show that the publication in which this material appeared was one of the qualifying types through evidence comparing its circulation or viewership to other publications and/or evidence regarding its intended audience. *See generally* 6 USCIS Policy Manual F.2, Appendices Tab, https://www.uscis.gov/policy-manual.

The Petitioner contends the Beneficiary satisfies this criterion since she published two articles: [redacted] and [redacted] Upon review of these articles, we conclude they do not qualify for this criterion because they are not about the Beneficiary. The [redacted] article discusses an assignment from one of the Beneficiary's classes and the outcome of that project; however, it is mainly about the project and general information about the course offered by the Beneficiary. Nor does [redacted] satisfy this criterion. The Beneficiary is a contributor, but the article is about the Mexican filmmaker [redacted] and a conversation with him about his film. Since this article does not discuss the Beneficiary at all, it does not qualify under this criterion.

Further, even if the article [redacted] is considered about the Beneficiary because it discusses one of her course offerings, it would not be sufficient to establish it was published in a professional or major trade publication or other major media. The article was published in the [redacted] website. In response to the Director's request for evidence, the Petitioner submitted the website visitation and ranking data for [redacted] from SimilarWeb.com. On appeal, the Petitioner states that [redacted] University's website had approximately 7.8 million visits last month. The website statistics from SimilarWeb.com indicate that [redacted] ranks 7,609 globally and 1,810 in the United States; it also shows the average amount of visits to the website and time viewers spend on the website. However, the record does not contextualize those statistics, indicate their significance, or elaborate on how that information could establish that the website is the type of major media contemplated by 8 C.F.R. § 204.5(h)(3)(iii). In addition, on appeal, the Petitioner states for the first time that [redacted] website is a professional publication but does not provide any supporting evidence to corroborate this claim.

After review of the totality of the evidence submitted in support of this criterion, we conclude that the Petitioner has not established the Beneficiary 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).

The primary requirements here are that the Beneficiary'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 causing it to duplicate another provision or have no consequence). Further, the Beneficiary's contributions must have already been realized rather than being potential, future improvements. Contributions of major significance connotes that the Beneficiary'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.

On appeal, the Petitioner contends the Beneficiary made major contributions and has disseminated her techniques throughout the field via lectures at major conferences, publications in globally ranked websites, and acknowledgements of her work in teaching and student assessments.

Several of the submitted reference letters indicate the Beneficiary successfully utilizes resources such as film, art, sculpture, and murals to teach foreign languages. Several of the authors indicate her teaching techniques received national and international acclaim as evidenced through her invitations to speak at conferences to present her teaching approach. But outside of sharing her teaching approach at conferences and seminars, the letters lack specific, detailed information explaining the unusual influence or high impact her contributions had on the overall field. Letters that specifically articulate how an individual's contributions are of major significance to the field and their impact on subsequent work add value. *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8-9. On the other hand, letters that lack specifics and use hyperbolic language do not add value and are not probative evidence that could form a basis for meeting this criterion. *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). 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).

The record contains evidence the Beneficiary spoke at several peer-reviewed conferences and served as a panelist at conventions and seminars. However, the Petitioner did not show how the Beneficiary's speaking and panelist engagements resulted in contributions of major significance in the field. The Beneficiary 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.

For the reasons stated above, the Beneficiary does not meet 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 Beneficiary 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 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, 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. *Id.* The Petitioner must submit evidence satisfying each of these elements to meet the plain language requirements of this criterion.

The Petitioner contends the Beneficiary qualifies for this criterion since she was published three times by the Northeast Conference on the Teaching of Foreign Language (NECTFL). However, while the evidence submitted shows the Beneficiary was a presenter for the conference in 2020, the Petitioner did not provide any evidence to support the claim the Beneficiary was in fact published by NECTFL. The Petitioner did not provide evidence that all presenters are automatically published. In addition, even if the Petitioner was published by NECTFL, the Petitioner did not submit the articles to determine if they qualify as scholarly articles. It is insufficient to allege eligibility through conclusory assertions that are not supported by sufficient evidence, which proves the allegation. *Matter of Ho,* 22 I&N Dec. 206, 213 (Assoc. Comm'r 1998); *Fano v. O'Neill*, 806 F.2d 1262, 1266 (5th Cir. 1987); *1756, Inc. v. Att'y Gen*, 745 F. Supp. 9, 17 (D.D.C. 1990).

For these reasons, the Petitioner has not established the Beneficiary meets this criterion.

III. CONCLUSION

The Petitioner has not submitted the required initial evidence the Beneficiary met either a one-time achievement or document she meets 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 Beneficiary's entry will substantially benefit prospectively the United States. Accordingly, we reserve these issues.[3]

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*,

[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).

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 the Beneficiary's 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 Beneficiary 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 the Beneficiary's 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.