U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28423935

Date: NOV. 16, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a choreographer, seeks classification as an individual of extraordinary ability in the arts. 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 the Petitioner 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,
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> (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
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> (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).

If a petitioner meets these initial evidence requirements, then we 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

Because the Petitioner has not established 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 Director found the Petitioner met one of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i) – (x), that of 8 C.F.R. § 204.5(h)(3)(vii), related to artistic exhibitions and showcases. On appeal, the Petitioner asserts she meets six additional evidentiary 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)

To fulfill this criterion, the Petitioner must demonstrate she received prizes or awards, and they are nationally or internationally recognized for excellence in the field of endeavor.[1] The description of this type of evidence in the regulation provides that the focus should be on the foreign national's receipt of the awards or prizes, as opposed to his or her employer's receipt of the awards or prizes.[2]

The Petitioner submitted evidence of 28 certificates, diplomas, and awards that she and her dance studio received for various events. These awards do not satisfy the plain language of the criteria for several reasons. First, the documentation regarding these awards does not clearly specify that the Petitioner received the award for her choreography. In some instances, the award has the word "choreography" in it; however, the documentation in the record appears not to clearly differentiate between her ability in choreography, as opposed to teaching how to choreograph, teaching dance, or dance performance.

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[1] See generally 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.

The Director noted that various awards reflected recognition for performance, rather than national or international recognition for excellence in the field of choreography. Most of the competitions' stated goals relate to inclusion, support, encouragement, child involvement, and teacher development, rather than a determination of who is at the top of their field. While the Petitioner may have won awards in connection with the dance performances of the children she taught, this is not a clear indicator that the award is for choreography. Even if it were clear that the awards relate to choreography, there is insufficient indication that it would be for excellence in the field. We acknowledge the categories under which the Petitioner won awards; however, it remains unclear why the Petitioner won the award in that category. The documentation about the awards offers little analysis of the Petitioner's choreography or how it places the Petitioner above others in the field. Further, the record does not include comparative information regarding how many awards for choreography other people received in the competitions. In fact, the entry information for many of the competitions states that every participant receives an award regardless of their placement.

The Petitioner emphasized the national and international nature of the awards; however, the documentation does not substantiate this. While we acknowledge that the competitions may be open to national or international competitors, the various nationalities of the people who may participate in the competition do not necessarily bear upon the national or international recognition of the award. The record does not contain sufficient evidence that these awards are recognized beyond the event or organization on a national or international level and are recognized for excellence in the field of choreography. Therefore, the Petitioner has not established eligibility under this criterion.

> Documentation of the individual*'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)

To satisfy this criterion, the Petitioner must show that membership in the association is based on being judged by recognized national or international experts as having outstanding achievements in the field for which classification is sought.[3]

The record supports a finding that the Petitioner is a member of the International Dance Council (CID); however, the Petitioner did not establish membership in CID requires outstanding achievements. We reviewed the steps required to become a member do not find any that relate to requiring outstanding achievements of its members. CID "increases its membership constantly" and has more than 2,000 institutional members and over 10,000 individual members. Without further context, these high numbers do not support a finding that members' achievements are assessed and determined to be outstanding. Further, constantly increasing membership suggests that individuals may become members at any time, as opposed to when they have demonstrated outstanding achievements in the field. Membership in CID appears to be based on a level of education or years of experience in a particular field and the payment of a fee. Such factors lead to a conclusion that the Petitioner's

[3] See generally USCIS Policy Memorandum PM 602-0005.1, supra, at 6.

membership was not based on outstanding achievements in the field.[4] As such, we conclude that the Petitioner has not established that she meets this criterion.

> Published material about the individual in professional or major trade publications or other major media, relating to the individual *'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).

To fulfill this criterion, the Petitioner must demonstrate published material about her in professional or major trade publications or other major media, as well as the title, date, and author of the material.[5]

The Petitioner submitted a printout of an article entitled '[redacted]" The article is primarily about flamenco and only quotes or references the Petitioner. For example, the article references the Petitioner in relation to where she purchases students' dance shoes and what she tells students about flamenco. While the article mentions the Petitioner in the context of a dance competition and notes the age demographics of the people with whom she works, we agree with the Director that the article is not about her or her work in the field. Articles that are not about a the foreign national do not fulfill this regulatory criterion. See, e.g., Negro-Plumpe v. Okin, 2:07-CV-820-ECR-RJJ at *1, *7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles regarding a show are not about the actor). We need not reach the issue of whether the publisher, Kazpravda, would be considered a professional or major trade publications or other major media.

On appeal, the Petitioner asserts the Director erred in not considering the Petitioner's appearance on "Good Morning Kazakhstan." We reviewed the transcript and photos of the morning show but conclude it does not establish eligibility under this criterion. First, we question the accuracy of the translation.[6] To illustrate, statements such as "[redacted]" and '[redacted]' even when taken within the context of the morning show conversation, do not convey any meaning. Further, the morning show appears to have aired solely on YouTube, which is a free, online video platform that enables individuals to upload their own videos and have their own channels. We do not consider YouTube to be a professional or major trade publication or other major media.

Accordingly, the Petitioner has not established eligibility under this criterion.

> Evidence of the individual *'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)

To satisfy the regulation at 8 C.F.R. § 204.5(h)(3)(v), a petitioner must establish that not only has she made original contributions, but that they have been of major significance in the field. For example, a Petitioner may show that the contributions have been widely implemented throughout the field, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance.[7]

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[4] Id.

[5] See generally USCIS Policy Memorandum PM 602-0005.1, supra, at 7.

[6] English translations of foreign language documents are required under the regulation at 8 C.F.R. § 103.2(b)(3).

[7] See Visinscaia, 4 F. Supp. 3d 126 at 134.

The Petitioner submitted numerous reference letters from colleagues and professionals. However, the authors did not sufficiently describe the Petitioner's contributions or their significance to the 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.[8] 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.[9]

The authors reference competitions the Petitioner's students won and offer general praise of her abilities and involvement in dance. Several authors claim the Petitioner was the first person in Kazakhstan to teach children flamenco and that she made flamenco relevant and accessible to modern audiences. However, the authors do not corroborate these assertions with objective, independent evidence. Even if we were to accept that the Petitioner was the first person in Kazakhstan to teach children flamenco, this would appear to relate to her ability in teaching dance, rather than in choreography. In addition, even if we were to accept that she made flamenco more popular in her city or country, it is unclear how this would be of major significance in the field of choreography or flamenco. The authors of the letters often label the Petitioner's work as "original" without providing sufficient details to substantiate such a characterization. USCIS need not accept primarily conclusory statements. See 1756, Inc. v. *The U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.C. Dist. 1990). To illustrate, teaching or performing dance in shopping malls does not appear to be an original idea or of major significance to the field of choreography. Similarly, it is not clear how "translating" flamenco to Russian speakers, making flamenco a "new trend," or providing flamenco masterclasses and lectures is either original or of major significance in the field of choreography.

Some authors reference that she developed '[redacted]' a mixture of flamenco with more classical dance forms. However, the record does not sufficiently substantiate that this is an original contribution or that it is attributable to the Petitioner, as mixing genres and types of dance is common and longstanding. Further, simply because the fusion may contain the Petitioner's individual or creative style is not necessarily sufficient to establish its originality. Even if [redacted] was developed or created by the Petitioner, she would still need to demonstrate its impact or influence beyond the people who engage her for performances, teaching, or lecturing.[10] For instance, documentation describes the significance of the Petitioner's contributions, noting that she is a role model for children dancing flamenco in Kazakhstan, has positively impacted their development, and saved them from harmful lifestyles, as well as that she provides adult women with a method to overcome shyness. The record contains insufficiently detailed evidence to support these contributions, but even if it did, this would not establish how the contributions are of major significance in the choreography field.

The Petitioner emphasized her involvement in the [redacted] flamenco group; however, the record does not sufficiently describe her activities as a choreographer, as opposed to highlighting her activity

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

[9] 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).

[10] See generally USCIS Policy Memorandum PM 602-0005.1, supra, at 8-9; see also Visinscaia, 4 F. Supp. 3d at 134-35 (upholding a finding that a ballroom dancer had not met this criterion because she did not corroborate her impact in the field as a whole).

as a performer. The Petitioner asserts that she wrote a flamenco guide and runs a dance studio; however, she does not explain how creating a dance guide or opening a dance studio, even a unique one, is an original contribution. The Petitioner has not established that her personal achievements are original contributions which have been of major significance to the choreography field. We conclude she has not established eligibility under 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)

The Petitioner must establish that she has performed in a leading or critical role. For a "leading" role, we consider evidence establishing that a petitioner is (or was) a leader within the organization or establishment.[11] For a "critical" role, we look to evidence that establishes a petitioner has contributed in a way that is of significant importance to the outcome of the organization or establishment's activities.[12]

The Petitioner offered evidence that she won several awards; however, her "laureate role" is not sufficiently explained. The evidence does not provide meaningful analysis of her role as a choreographer in winning the awards. The Petitioner also submitted evidence that her dance studio contracts and collaborates with fitness studios and fitness membership services. While this indicates her classes are a form of exercise, without more, we conclude that entering into contracts or collaborations of this nature does not establish that she performed a leading or critical role for organizations of distinguished reputations.

Regarding her role in the [redacted] group, Counsel emphasized that "thanks to" the Petitioner, the [redacted] group achieved success in a short time and "could demonstrate dance and musical compositions for the residents of [redacted]" Further, "thanks to" her choreography abilities, all productions and programs became a series of lectures the [redacted] group conducted. However, Counsel's unsubstantiated assertions do not constitute evidence. See, e.g., Matter of S-M-, 22 I&N Dec. 49, 51 (BIA 1998) ("statements in a brief, motion, or Notice of Appeal are not evidence and thus are not entitled to any evidentiary weight"). Although we have thoroughly examined the evidence, there is insufficient information about her specific role in the [redacted] group to substantiate a finding that it is leading or critical, particularly as flamenco involves more elements than just performances and dance choreography.[13]

To the extent the evidence substantiates a finding that the Petitioner founded and is the chief choreographer of the '[redacted]' studio, we conclude that such a role could be leading or critical. Nevertheless, the Petitioner has not sufficiently established that '[redacted]' has a distinguished reputation. Documentation in the record indicates the students of '[redacted]' studio won awards, as did other dancers from other studios. Other documentation indicates that '[redacted]' may be popular in [redacted] However, neither of these factors is a sufficient basis for establishing a distinguished reputation. As every participant earns an award at many of the referenced competitions, as well as that other awards or competitions exist outside of those referenced, we cannot conclude that

[11] See generally USCIS Policy Memorandum PM 602-0005.1, supra, at 10.
[12] Id.
[13] For instance, the record includes documentation stating that flamenco also involves elements of music and singing.

such awards distinguish the studio. Similarly, the popularity of the studio may relate to its relatively new status (founded in 2018), rather than its reputation. Alternatively, the studio's popularity may relate to its location in [redacted], whereas other dance studios teaching flamenco in Kazakhstan are in [redacted]. Without further information, we cannot conclude that the '[redacted]' studio is an organization with a distinguished reputation.[14]

For the foregoing reasons, the Petitioner has not established eligibility under this criterion.

Summary of Eligibility Criteria

The Petitioner did not demonstrate that she satisfies the criteria relating to awards, memberships, published material, original contributions, or a leading and critical role. Additionally, the Petitioner did not assert, nor does the record support a finding of, eligibility under criteria 8 C.F.R. § 204.5(h)(3)(vi), (ix), or (x). Although the Petitioner claims eligibility under 8 C.F.R. § 204.5(h)(3)(iv) for judging others' work, we need not analyze this criterion. Even if the Petitioner established eligibility under it, she would still be unable to establish that she is eligible under at least three of the ten criteria.[15] Therefore, we will not provide the type of final merits determination referenced in Kazarian, 596 F.3d at 1119-20. Nevertheless, we reviewed the record in the aggregate and conclude that it does not support a conclusion that the Petitioner has established the acclaim and recognition required for the classification sought.

III. CONCLUSION

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. 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). For the reasons discussed above, the Petitioner has not demonstrated eligibility as an individual of extraordinary ability.

ORDER: The appeal is dismissed.

[14] Merriam-Webster's online dictionary defines "distinguished" as "marked by eminence, distinction, or excellence" or "befitting an eminent person," found at https://www.merriam-webster.com/dictionary/distinguished.

[15] We reserve arguments relating to criterion 8 C.F.R. § 204.5(h)(3)(iv). 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).