U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 25937049

Date: NOV. 17, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, an aromatherapist, 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 the Petitioner had not established eligibility as an individual of extraordinary ability, either as the recipient of a major, internationally recognized award, or by meeting 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

To qualify under this immigrant classification, the statute requires the filing party demonstrate:

- The foreign national enjoys extraordinary ability in the sciences, arts, education, business, or athletics;
- They seek to enter the country to continue working in the area of extraordinary ability; and
- The foreign national's entry into the United States will substantially benefit the country in the future.

Section 203(b)(1)(A)(i)–(iii) of the Act. 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, 1121 (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 Amin v. Mayorkas*, 24 F.4th 383, 394 (5th Cir. 2022).

II. ANALYSIS

The Petitioner is an aromatherapist who proposes to open an aromatherapy studio in [redacted] Washington.

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 initially claimed to have satisfied the criteria listed below:

- 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) ;
- 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);
- 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);
- Evidence of the individual'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); and
- 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 Director concluded that the Petitioner satisfied one criterion relating to leading or critical role for distinguished organizations or establishments; however, we disagree.[1] The plain language of the regulation requires the organizations or establishments to have a distinguished reputation, defined as "marked by eminence, distinction, or excellence or befitting an eminent person."[2] In response to the Director's request for evidence, the Petitioner submitted evidence that she is the founder of [redacted] In

[1] We note that the Director did not provide any explanation for this conclusion.

[2] *See* https://www.merriam-webster.com/dictionary/distinguished, cited in 6 *USCIS Policy Manual* F.2 appendix, https://www.uscis.gov/policymanual.

addition, she provided copies of awards issued to [redacted] such as the "Parents' Choice Award 2019" from [redacted] and the title of "high quality natural TCM aromatherapy product in 2020" from [redacted] Although we acknowledge the awards, the Petitioner has not provided documentation to establish their significance such that their receipt demonstrates the distinguished reputation of the company. Without more, the evidence is insufficient to establish that either company has a distinguished reputation as required by the regulation at 8 C.F.R. § 204.5(h)(3)(viii). Therefore, the Petitioner has not established that she meets this criterion, and we withdraw the Director's determination to the contrary.

In addition, we observe that the Petitioner does not contest the Director's conclusion regarding published material about the individual or provide any additional evidence on appeal. We therefore consider the Petitioner to have waived this criterion.[3]

On appeal, the Petitioner submits a statement, two letters of recommendation, one from a member of the International Services Advisory Committee (ISAC) at University [redacted] Health and one from her publisher, and membership information regarding the United Kingdom's International Federation of Aromatherapists (IFA). In her statement, the Petitioner contends that there are "some details that need to be supplemented to facilitate" our judgement. She further discusses her education and experience with aromatherapy. Moreover, she asserts that she has been "making contributions to this industry for more than ten years, including creating training schools, researching and developing essential oil products and writing professional books." However, upon review, we conclude that the evidence does not overcome the Director's determination that the Petitioner does not meet at least three of the ten criteria.

Regarding the letter from the ISAC member, the Petitioner simply describes it as a "supporting letter" without any additional explanation of its significance or the criterion it addresses. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Commensurate with that burden is the responsibility for explaining the significance of proffered evidence. *Repaka v. Beers*, 993 F. Supp. 2d 1214, 1219 (S.D. Cal. 2014).

The author of the letter states that the Petitioner has:

> [P]ioneered the practice of aromatherapy where she is the first to have discovered new practices and applications of aromatherapy as a form of natural treatment that not only utilizes the natural and rapid properties of essential oils, but also accurately treats various systems through [Traditional Chinese Medicine (TCM)] ideologies for fast, effective, and accurate effects.

The author further states that his family member used her rhinitis cream, and it improved her symptoms. Moreover, the author states that he has read her books and that it has broadened his belief "in essential oils and the application of its natural properties as a plant-based and organic alternative

[3] *See Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012) (stating that when a filing party fails to appeal an issue addressed in an adverse decision, that issue is waived); *see also Sepulveda v. US. Att'y Gen.*, 401 F .3d 1226, 1228 n. 2 (11th Cir. 2005); *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885 at *1, 9 (E.D.N.Y. Sept. 30, 2011) (finding the plaintiff's claims to be abandoned as he failed to raise them on appeal to the AAO).

solutions." Even if we were to assume that the letter is intended to address the original contributions criterion, it does not sufficiently describe a specific original contribution that has impacted the broader field of aromatherapy, provoked widespread commentary, or had an influence on subsequent work in the specific field. The author's assertions do not explain how the Petitioner's work has been widely implemented in the field or establish that the Petitioner's work has had a demonstrable impact on the field as a whole commensurate with an original contribution of major significance.

With regard to the publisher's letter, the author also discusses the Petitioner's education and experience in aromatherapy. In addition, the author states that the Petitioner "took the lead in developing the cause of aromatherapy education and training in China." Furthermore, the author discusses the Petitioner's books entitled [redacted] The author states that that "[t]hese books contain a lot of [the Petitioner's] painstaking efforts, including rich and exclusive clinic cases" and "[e]ach chapter has unique insights, which is extremely expansive and referential for fans and practitioners."

As discussed by the Director, a scholarly article is an article that is written for learned persons in the field. Here, the letter does not establish that the Petitioner's books were written for learned persons. Instead, it appears they are a guide for using aromatherapy on children and pregnant women. Furthermore, the letter does not demonstrate that the Petitioner's books are professional or major trade publications or other major media. Moreover, this letter also does not establish that the Petitioner has made an original contribution of major significance in the field as it does not demonstrate a specific original contribution that has impacted the broader field of aromatherapy, provoked widespread commentary, or had an influence on subsequent work in the specific field.

Regarding the membership information from IFA, the evidence shows that there are five levels of membership and, in order to become a member, an individual is required to complete particular courses corresponding to the specific membership level and pay an annual fee. The evidence does not demonstrate that IFA requires outstanding achievement as an essential condition for membership as required by the regulation at 8 C.F.R. § 204.5(h)(3)(ii). Therefore, the evidence does not overcome the Director's determination that she has not met this criterion.

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 do not need to 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 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 that goal. We have 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). Here, the Petitioner has not shown that the significance of her work in aromatherapy is indicative of the required sustained national or international acclaim, 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 are one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) 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.

ORDER: The appeal is dismissed.