U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 26293166

Date: OCT. 5, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, a singer, 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 that although the Petitioner satisfied at least three of the initial evidentiary criteria, as required, she did not show her sustained national or international acclaim and demonstrate she is among the small percentage at the very top of the field of endeavor. In addition, the Director determined the Petitioner did not establish her intent to continue to work in her area of extraordinary ability in the United States. 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,
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> (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 sustained acclaim and the recognition of achievements in the field through a one-time achievement (that is, a major, internationally recognized award) or qualifying documentation that meets at least three of the ten categories 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).

II. ANALYSIS

A. Evidentiary Criteria

Because the Petitioner has not claimed or established 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 determined the Petitioner met three of the claimed evidentiary criteria relating to published material at 8 C.F.R. § 204.5(h)(3)(iii), judging at 8 C.F.R. § 204.5(h)(3)(iv), and display at 8 C.F.R. § 204.5(h)(3)(vii). However, the Director concluded the Petitioner did not show she garnered sustained national or international acclaim and her achievements have been recognized in the field of expertise, demonstrating she is one of that small percentage who has risen to the very top of the field.

On appeal, the Petitioner argues she satisfies additional criteria, and her evidence in the aggregate establishes her eligibility as an individual of extraordinary ability. Because the Petitioner has already shown she fulfills the minimum requirement of at least three criteria, we will evaluate the totality of the evidence based on the documentation presented to the Director in the context of the final merits determination below.[1]

B. Final Merits Determination

As the Director concluded that the Petitioner submitted the requisite initial evidence, we will evaluate whether she has demonstrated, by a preponderance of the evidence, her sustained national or

[1] *See* 6 *USCIS Policy Manual* F.2(B)(2), https://www.uscis.gov/policymanual.

international acclaim,[2] she is one of the small percentage at the very top of the field of endeavor, and her achievements have been recognized in the field through extensive documentation. In a final merits determination, we analyze an individual's accomplishments and weigh the totality of the evidence to determine if her successes are sufficient to demonstrate that she has extraordinary ability in the field of endeavor. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20.[3] In this matter, we determine the Petitioner has not shown her eligibility.

As it relates to the Petitioner's earlier background, according to the initial cover letter:

> . . . In 1987, she entered music school named after [redacted] and graduated in 1994, the class of violin. In 1986 she sang in [redacted] Junior Ensemble. From 1995 to 1997 she was a singer at the [redacted] band. From 1997 to 2003, [the Petitioner] worked as a vocalist at the [redacted] Theater of Armenia, where she worked as a vocal teacher from 2001 to 2002.
>
> In 2005, [the Petitioner] entered the [redacted] and graduated in 2009 receiving bachelor's degree in in [sic] the field of Vocal Art, Variety-Jazz Singing. In 2010, [the Petitioner] received master's degree from [redacted] in Musical Art, Singing-Variety-Jazz Singing. The same year she started her postgraduate studies again at the [redacted] and graduated with honors in 2012. [The Petitioner] received her Postgraduate Certificate on September 28, 2012, during her solo concert at [redacted] Sports and Concerts Complex in [redacted] Armenia . . . . Since 2014, [the Petitioner] works as a Lecturer at Jazz and Pop Department of Vocal-Theory Faculty of [redacted] . . .

As discussed further below, the Petitioner has garnered awards, received media coverage, served on panels for music contests, been praised by others in the field, and performed at concert venues while earning income from her shows. However, in considering the totality of the evidence, the Petitioner has not demonstrated that her achievements are reflective of a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990). Furthermore, the Petitioner has not shown that she has risen to that small percentage at the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(3). The commentary for the proposed regulations implementing section 203(b)(1)(A)(i) of the Act provides that the "intent of Congress that a very high standard be set for aliens of extraordinary ability is reflected in this regulation by requiring the petitioner to present more extensive documentation than that required" for lesser classifications. 56 Fed. Reg. 30703, 30704 (July 5, 1991). Here, the Petitioner has not sufficiently documented a career that meets this very high standard.

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[2] *See* 6 *USCIS Policy Manual*, *supra*, at F.2(A)(1) (stating that such acclaim must be maintained and providing *Black's Law Dictionary's* definition of "sustain" is "to support or maintain, especially over a long period of time . . . To persist in making (an effort) over a long period of time").

[3] *See* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(2) (instructing that USCIS officers should consider the petition in its entirety to determine eligibility according to the standard – sustained national or international acclaim and the achievements have been recognized in the field of expertise, indicating that the person is one of that small percentage who has risen to the very top of the field of endeavor).

The Petitioner provided evidence reflecting her receipt of about two dozen awards from 2003 to 2019. Although the awards may show some recognition of her work, the Petitioner did not demonstrate how they indicate that she "is one of that small percentage who [has] risen to the very top of the field of endeavor." *See* 8 C.F.R. § 204.5(h)(2). While the Petitioner submitted accompanying articles reporting on the winners, the Petitioner did not establish that she received awards indicative of the upper echelon in the field. Rather, based on the documentation, the majority of the awards were recently established or created, such as her receipt of the "Revelation of the Year" and "Hit of the Year" at the First National Music Awards in [redacted] Armenia. In fact, according to the article from aravot.am, "almost all the participants were given something, probably not to celebrate the New Year offended." Here, the Petitioner did not demonstrate that her awards place her among that small percentage at the very top of the field. USCIS has long held that even athletes performing at the major league level do not automatically meet the statutory standards for classification as an individual of "extraordinary ability." *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994).

Regarding media coverage, the Petitioner offered about three dozen articles covering 2006 – 2018. Again, while the published material indicates some attention to her and her work, the Petitioner did not establish that such reporting is consistent with a level of success consistent with being among "that small percentage who [has] risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The Petitioner, for instance, did not show how her limited media coverage, averaging about 2 – 3 articles per year, compares to other singers among the very top of the field. Here, the Petitioner did not demonstrate how her press coverage reflects a "career of acclaimed work in the field" or a "very high standard . . . to present more extensive documentation than that required." *See* H.R. Rep. No. at 59 and 56 Fed. Reg. at 30704.

As it pertains to the Petitioner's service as a judge of the work of others, an evaluation of the significance of her experience is appropriate to determine if such evidence indicates the required extraordinary ability for this highly restrictive classification. *See Kazarian,* 596 F. 3d at 1121-22. The Petitioner presented evidence showing she participated on the jury for [redacted] on Armenia TV, as well as a judge for three student festivals/contests. Here, the Petitioner's judging experience involves evaluating the work of amateurs and aspiring singers rather than nationally or internationally renowned artists. Furthermore, the Petitioner did not establish that these evaluations contribute to a finding that she has a career of acclaimed work in the field or indicative of the required sustained national or international acclaim. *See* H.R. Rep. No. 101-723 at 59 and section 203(b)(1)(A) of the Act. She did not show, for example, how her experience in evaluating aspiring singers and students compares to others at the very top of the field. Without evidence that sets her apart from others in the field, such as evidence that she has a consistent history of reviewing or judging recognized, acclaimed singers or experts in her field, the Petitioner has not shown that her judging experience places her among that small percentage who has risen to the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2) and 56 Fed. Reg. at 30704.

We note here that the Petitioner provided recommendation letters praising her for her talents, skills, and abilities. For instance, [redacted] opined on the Petitioner's "unique velvety voice and exceptional melismatic singing." Although the letters commend the Petitioner on her songs, they do not contain sufficient information and explanation to show that she is viewed by the overall field, rather than by a solicited few, as being among the upper echelon or that she is among the small percentage at the very top of the field of endeavor. Further, the letters do not establish that she has

made impactful or influential contributions in the greater field reflecting a career of acclaimed work in the field, garnering the required sustained national or international acclaim. *See* H.R. Rep. No. at 59 and section 203(b)(1)(A) of the Act.

As it relates to the display of her work, the Petitioner submitted screenshots and photographs of her performing at various venues, such as [redacted], California; [redacted] Sports and Concerts Complex in [redacted] Armenia; and [redacted], France. Although the Petitioner established that she exhibited her work on television and at concerts, festivals, and other music venues, simply displaying one's work, however, does not automatically place one at the very top of the field. *See* 8 C.F.R. § 204.5(h)(2); *Price*, 20 I&N Dec. at 954. Here, the Petitioner did not demonstrate the significance of her performances, such as they brought wide praise from critics, drew notable crowds, raised attendance, or was responsible for the success of standings of the events. *See* 56 Fed. Reg. at 30704. Moreover, regarding her commercial successes, while the Petitioner pointed out that 1,233 seats were sold out of 1,381 seats at her 2007 concert at the [redacted] California and she sold out 2,041 seats at her 2012 concert at the [redacted] Sports and Concerts Complex in [redacted] Armenia, the Petitioner did not establish that her ticket sales place her among the small percentage at the very top of the field. The Petitioner, for instance, did not compare her box office receipts or ticket sales to others among the very top of the field. Here, the Petitioner's evidence does not distinguish herself from others in the field or shows a career of acclaimed work in the field. *See* H.R. Rep. No. 101-723 at 59. In addition, the Petitioner did not demonstrate that her work garnered a level of attention or was regularly seen at highly reputable venues consistent with being among that small percentage who has risen to the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2).

Finally, the Petitioner provided evidence reflecting that she earned approximately $4,200 for a two-hour concert. However, the Petitioner did not establish that she commanded earnings commensurate with sustained national or international acclaim. *See* section 203(b)(1)(A) of the Act. The Petitioner did not show that her wages are tantamount to an individual who is among that small percentage at the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2). She did not demonstrate, for example, how her salary compared to others at the very top of her field, or that she received notoriety or attention based on her earnings separating herself from others in the field or placing her in the upper echelon.

The record as a whole, including the evidence discussed above, does not establish the Petitioner's eligibility for the benefit sought. Here, 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 (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), *aff'd*, 2023 WL 1156801 (D.C. Cir. Jan. 31, 2023) (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). In this case, the Petitioner has not shown the significance of her work is indicative of the required sustained national or international acclaim or it is consistent with a "career of acclaimed work in the field" as contemplated by Congress. *See* H.R. Rep. No. at 59; *see also* section 203(b)(1)(A) of the Act. While the Petitioner need not establish that there is no one more accomplished to qualify for the classification sought, the record is insufficient to demonstrate that she is among the small percentage at the top of her field. *See* 8 C.F.R. § 204.5(h)(2).

III. CONCLUSION

For the reasons discussed above, the Petitioner has not demonstrated her eligibility as an individual of extraordinary ability.[4] 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.

[4] As the Petitioner has not established her extraordinary ability under section 203(b)(1)(A)(i) of the Act, we need not consider whether she will continue to work her area of extraordinary ability under section 203(b)(1)(A)(ii) of the Act. Accordingly, we decline to reach and hereby reserve this issue. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternate issues on appeal where applicants do not otherwise meet their burden of proof).