U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28355024

Date: OCT. 11, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, a gender, diversity, and inclusion specialist, seeks classification as an individual of extraordinary ability in business. *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 the record did not establish that the Petitioner satisfied the initial evidence requirements for this classification by demonstrating her receipt of a major, internationally recognized award or by submitting evidence to satisfy at least three of the ten evidentiary criteria at 8 C.F.R. § 204.5(h)(3). The Director subsequently reopened the proceeding. In a second decision, the Director denied the petition, concluding that although the record established that the Petitioner satisfied the initial evidentiary requirements for this classification, she did not establish, as required, that she has sustained national or international acclaim and is among that small percentage at the very top of her field of endeavor. 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 sustained acclaim and the 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 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, 1343 (W.D. Wash. 2011).

II. CHRONOLOGY

The Petitioner earned a master's degree in anthropology (with minors in sociology and gender studies) from [redacted] Berlin in 2004, and a master's degree in international affairs from [redacted] University in 2005. She has had approximately 17 years of work experience with several agencies of the United Nations, including the [redacted] as a liaison officer, consultant, program manager, and partnerships manager. At the time of filing, she stated that she was employed as a digital partnerships manager with the [redacted] in G-4 nonimmigrant status. The Petitioner indicates that she intends to continue working in the United States in the field of gender, inclusion, and diversity but in the private sector, specifically, the media and entertainment industry.

The Petitioner filed the Form I-140 petition in May 2022, at which time the Director issued a request for evidence (RFE). The Petitioner submitted a response to the RFE in July 2022. The Director denied the petition in August 2022. In December 2022, the Director reopened the proceeding, and issued a second RFE. The Petitioner responded to the RFE in March 2023. The Director denied the petition a second time in April 2023, and the Petitioner appealed the decision in May 2023.

III. ANALYSIS

Because the Petitioner has not indicated or established that she has 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 that she could meet up to five of the ten criteria.

The Director determined that the Petitioner had met three of the evidentiary criteria and therefore satisfied the initial evidence requirements for this classification. Specifically, the Director determined that the Petitioner submitted evidence that she had participated as a judge of the work of others in the field; evidence that she had performed in a leading or critical role for an organization with a distinguished reputation; and evidence that she has commanded a high salary in relation to others in the field. *See* 8 C.F.R. §§ 204.5(h)(3)(iv), (viii), and (ix). Although we agree with the Director that the Petitioner performed in a leading or critical role for an organization with a distinguished reputation, we do not concur with the Director's finding relating to the judging and high salary criteria, discussed later. We therefore conclude that the Petitioner has not satisfied the initial evidence requirements by meeting at least three of the criteria at 8 C.F.R. § 204.5(h)(3).

> *Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.* 8 C.F.R. § 204.5(h)(3)(iv).

As discussed earlier, the Director found that the Petitioner satisfied this criterion. This regulatory criterion requires a petitioner to show that she has acted as a judge of the work of others in the same or an allied field of specialization. For the reasons outlined below, the record does not reflect that the Petitioner submitted sufficient documentary evidence demonstrating that she meets this criterion, and the Director's determination on this issue will be withdrawn.

The record reflects that the Petitioner claimed eligibility for this criterion based on her asserted review of advertising campaign submissions at the Ad Venture Student Competition 2018-2019. The record shows that the competition, sponsored by the European Institute for Commercial Communications Education (EDCOM), required competing teams to provide advertising campaigns that raise awareness of gender-stereotyped marketing aimed at children.

Within the initial submission, the Petitioner provided an email dated March 22, 2019, addressed to her from E-H-, an education and training assistant with the European Association of Communications Agencies (EACA),[1] providing her individual login details to the Ad Venture judging platform. The email also attached a jury information pack for the competition, indicating that "for the first round of judging, each juror will be given between 7-9 campaigns to judge between 22 March and 8 April 2019 . . . . on our online Ad Venture platform, through which students also submit their work." The information pack indicated that jurors would award each submission with a score out of 10 points for three separate judging criteria: research; strategy; and creativity and media. The Petitioner also provided an additional email addressed to her from E-L- dated April 4, 2019, which states "I am getting in touch with you to make sure everything is running smoothly with the judging process" and

[1] The record shows that EACA founded EDCOM in 2007.

advising the Petitioner "to reach out should you encounter any difficulties accessing the platform or submitting your votes."

Within her response to the Director's first RFE, the Petitioner provided an email she sent to E-L- dated April 5, 2019, stating "I will make sure to complete the judging in the next couple of days." Further, she provided emails from E-L- dated April 26, 2019, and May 22, 2019, addressed to "Ad Venture Jurors," thanking them for their participation, identifying the teams that made the final competition, and providing the winner of the Ad Venture Student Competition 2018-2019.

In order to meet this criterion, a petitioner must show that she has not only been invited to judge the work of others, but also that she actually participated in the judging of the work of others in the same or allied field of specialization. Here, the above emails do not demonstrate that the Petitioner actually completed the judging of advertising campaigns for the 2018-2019 Ad Venture Student Competition. Instead, as indicated above, the emails reflect a reminder to conduct the advertising campaign judging, and the Petitioner's statement of her intention to complete that task. Moreover, the Petitioner did not present any supporting evidence establishing that she, in fact, performed the advertising campaign judging. Further, the Petitioner did not submit corroborating documentation showing how many or which advertising campaigns she reviewed at the first round of the Ad Venture Student Competition 2018-2019.

For the reasons discussed above, the Petitioner did not establish that she participated as a judge of the work of others consistent with this regulatory criterion. Accordingly, we withdraw the decision of the Director for 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).

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

In her personal statement, the Petitioner placed particular emphasis on having "contributed to and co-authored some of [redacted] major professional publications such as their annual reports" published in 2021. The Petitioner relies upon several support letters from coworkers to establish her eligibility under this criterion. The authors indicate that the Petitioner, during her tenure at [redacted], contributed to [redacted] publications. The letters support a determination that she has experience in the field of gender, diversity, and inclusion, and has offered valuable contributions to projects to which she was assigned. However, the letters do not describe a specific original contribution that has impacted the broader field of gender, diversity, and inclusion, provoked widespread commentary, or had an influence on subsequent work in the specific field.

On appeal, the Petitioner argues that her previously submitted recommendation letters from L-R- and S-J-, both of [redacted] "clearly describe how the [Petitioner's] research contributions have impacted

the field."[2] The letter from L-R-, Associate Director, Gender Equality, and S-J-, Senior Advisor, Gender Equality, describe the Petitioner's previous roles as "Gender Socialization Programme Manager" and "Partnerships Manager" with [redacted] Gender Section in New York. The Petitioner indicates in her resume that she held these roles between 2017 and 2021.

The letter from L-R- relates that the Petitioner's work involved "researching and reporting our findings as to how the COVID-19 pandemic has impacted women and girls" in three [redacted] publications published in 2021.[3] It asserts she "helped yield new resources for the team" through partnerships with corporations such as [redacted] on self-esteem and body confidence for girls, and [redacted] on STEM and digital literacy skills for girls.

The letter from S-J-, relates the Petitioner's having made "original contributions of major significance in the area of promoting gender roles in media and entertainment" through researching and contributing to several additional [redacted] publications published in 2021.[4] S-J- praises her "sharp focus on identifying and providing solutions to address gender-related stereotypes." However, the letters from L-R- and S-J- did not elaborate on how her research contributions and reporting have been of major significance in the overall field beyond the U.N. agencies that utilized her contracted services.[5]

For instance, S-J- broadly claimed that [redacted] has benefited from [the Petitioner's] contributions, other UN agencies have benefited from her contributions, and the international community of girls and women has benefited from [the Petitioner's] work. The impact of her work is far-reaching and significant, and it exhibits innovative approaches to age-old problems." Here, S-J- did not provide specific information explaining how the Petitioner's contributions impacted the greater field. While this and other letters in the record sufficiently show that she performed in critical roles for specific organizations satisfying the regulation at C.F.R. § 204.5(h)(3)(viii), a separate and distinct criterion, they do not demonstrate that she has made original contributions of major significance in the larger field.

Furthermore, L-R- speculates on the potential influence of a corporate partnership the Petitioner developed and on the possibility of its being majorly significant at some point in the future. For example, L-R- asserted that the partnership the Petitioner developed with [redacted] on STEM and digital literacy skills for girls will "increase their representation in STEM careers and the 21st century workforce of the future." While L-R- indicates promise in the Petitioner's previous work for

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[2] Although we discuss only the letters that the Petitioner highlights on appeal, we have reviewed and considered each one.

[3] L-R- cites to the following [redacted] publications: *Family-Friendly Policies for Workers in the Informal Economy:* [redacted] F.org), and the [redacted] annual reports, *Global Annual Results Report 2020 –* [redacted] .org) and *Global Annual Results Report 2020 –* [redacted] .org).

[4] S-J- cites to the following additional [redacted] publications: *Advancing Positive Gender Norms and Socialization* [redacted] ([redacted] org); *Technical Note - Gender Responsive Parenting* ([redacted] org); and *Promoting Diversity and Inclusion in Advertising:* [redacted] org).

[5] *See generally* 6 *USCIS Policy Manual*, F.2(B)(1), https://www.uscis.gov/policy-manual (providing guidance for the evaluation of evidence submitted under 8 C.F.R. § 204.5(h)(3)(i)-(x)); *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).

[redacted] Gender Section she did not demonstrate how her work already qualifies as a contribution of major significance in the field, rather than prospective, potential impacts. The significant nature of her work to the greater field has yet to be determined, measured, or established.

Submitted letters should specifically describe the Petitioner's contribution and its significance to the field.[6] Here, the Petitioner's letters do not contain specific, detailed information explaining the unusual influence or high impact her work has had on the overall field. 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 Petitioner also submitted her claimed publications and citation evidence for her published work. The Petitioner indicated that she co-authored the above six publications and that others cited her written work in their own work. In *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009), the court held that publications and presentations are not sufficient evidence under 8 C.F.R. § 204.5(h)(3)(v) absent evidence that they were of "major significance" in the field. In 2010, the *Kazarian* court reaffirmed its holding that we did not abuse our discretion in finding that the petitioner had not demonstrated contributions of major significance. 596 F.3d at 1122. Furthermore, there is no presumption that every published article or conference presentation is a contribution of major significance in the field; rather, a petitioner must document the actual impact of their article or presentation.

As one type of evidence of the impact of her work, within her response to the second RFE, the Petitioner included a Google Scholar citation report which indicated that two versions of the Petitioner's 2021 publication, entitled *Family-Friendly Policies for Workers in the Informal Economy:* [redacted] were published on Papers.ssrm.com and Europepmc.org. The citation report from Google Scholar did not show that the publication garnered any citations.[7]

Again, this criterion requires the Petitioner to establish that she has made original contributions of major significance in the field. Thus, the burden is on the Petitioner to identify her original contributions and explain why they are of major significance in the field. Generally, citations can confirm that the field has taken interest in a petitioner's research or written work. The Petitioner submitted several examples of articles that cited to the publication *Family-Friendly Policies for Workers in the Informal Economy:* [redacted] including self-citations in other [redacted] publications; however, they do not reflect that her written work was singled out as particularly important. Rather, the Petitioner's work was utilized as background information to the authors' articles. The Petitioner has not sufficiently shown that her citations for any of her claimed publications are commensurate with contributions of major significance.

For the reasons discussed above, considered both individually and collectively, the Petitioner has not shown that she has made original contributions of major significance in the field.

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[6] *Id.*

[7] The remaining five publications the Petitioner claims to have authored are not listed on the aforementioned Google Scholar report.

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field. 8 C.F.R. § 204.5(h)(3)(ix).

As indicated earlier, the Director found that the Petitioner established eligibility for this criterion. In order to meet this criterion, a petitioner must demonstrate that their salary or remuneration is high relative to the compensation paid to others working in the field. If a petitioner claims to meet this criterion, then the burden is on the petitioner to provide appropriate evidence of their earnings or remuneration and evidence such as geographical or position-appropriate compensation surveys. *See generally*, 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1). For the reasons outlined below, the record does not reflect that the Petitioner provided sufficient documentary evidence demonstrating that she fulfils this criterion, and the Director's determination on this issue will be withdrawn.

The Petitioner did not initially claim that she could satisfy this criterion. The Director's second RFE advised her that she would need to submit documentation of her annual earnings and evidence that would allow USCIS to compare her earnings to that of others working in the field. In response to the Director's RFE and on appeal, the Petitioner claimed eligibility for this criterion based on her salary at her position at [redacted] Specifically, the Petitioner submitted evidence showing her salary in her current role as "Digital Partnerships Manager" at [redacted] The Petitioner's current position is also described in the record by [redacted] as a "Partnerships & Fundraising Specialist." However, the Petitioner provided wage data of occupations that are not same as these positions. In particular, the Petitioner offered documentation relating to the salaries of gender, diversity, and inclusion consultants, specialists, and managers.

Although she likens her salary to other occupations, the Petitioner did not show that she commands a high salary "in relation to others in the field," such as digital partnerships managers and partnerships and fundraising specialists. *See Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994) (considering a professional golfer's earnings versus other PGA Tour golfers); *see also Skokos v. U.S. Dept. of Homeland Sec.*, 420 F. App'x 712, 713-14 (9th Cir. 2011) (finding salary information for those performing lesser duties is not a comparison to others in the field); *Grimson v. INS*, 934 F. Supp. 965, 968 (N.D. Ill. 1996) (considering NHL enforcer's salary versus other NHL enforcers); *Muni v. INS*, 891 F. Supp. 440, 444-45 (N. D. Ill. 1995) (comparing salary of NHL defensive player to salary of other NHL defensemen). Here, the Petitioner did not demonstrate she earned a high salary compared to others in her field.

Because the Petitioner did not establish that she satisfies this criterion, we withdraw the decision of the Director for this criterion.

IV. CONCLUSION

We find that although the Petitioner satisfies the leading or critical role criterion, she does not meet any additional criteria on appeal regarding judging, contributions, and high salary. While she claims eligibility for one additional criterion on appeal, relating to scholarly articles at 8 C.F.R. § 204.5(h)(3)(vi), we need not reach this additional ground. As the Petitioner cannot fulfill the initial

evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3), we reserve this issue.[8] Accordingly, 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. 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. at 954. 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)(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 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.

[8] *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, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).