U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31049892

Date: JUNE 17, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner is a dance instructor who seeks classification as an alien 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 Nebraska Service Center Director denied the Form I-140, Immigrant Petition for Alien Workers (petition), concluding the record did not establish that the Petitioner had a major, internationally recognized award, nor did she demonstrate that she met at least three of the ten regulatory criteria. The matter is now before us on appeal. The Petitioner bears the burden of proof to demonstrate eligibility to U.S. Citizenship and Immigration Services (USCIS) by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (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 a dance instructor who intends to open her own business in the United States to continue in that effort.

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). Before the Director, the Petitioner claimed she met four of the regulatory criteria. The Director decided that the Petitioner satisfied one of the criterion relating to judging, but that she had not satisfied the criteria associated with prizes or awards, published material, or under a leading or critical role. On appeal, the Petitioner maintains that she meet the evidentiary criteria relating to prizes or awards, published material. After reviewing all the evidence in the record, we conclude the Petitioner does not qualify for this highly restrictive immigrant classification.

> *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 did not initially claim eligibility under this criterion, and in response to the Director's request for evidence she presented claims relating to two organizations. The Director noted her performance for these organizations occurred after she filed the petition, which they would not consider in this petition as she must demonstrate she was eligible on the date she filed the petition. The Petitioner must establish that she has satisfied all eligibility requirements for the immigration benefit from the date she filed the petition continuing through adjudication. 8 C.F.R. § 103.2(b)(1). USCIS may not approve a visa petition if the Petitioner was not qualified at the priority date but expects to become eligible at a subsequent time. *See Matter of Izummi,* 22 I&N Dec. 169, 175–76 (Assoc. Comm'r 1998); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). These claims will not be factored into the proceedings associated with this particular petition.

> *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).

The Petitioner provided articles from three sources before the Director. The Director discussed one publication and determined that the Petitioner did not meet the requirements of this criterion. On appeal, the Petitioner points to the two articles the Director did not discuss and claims those adequately support her eligibility under this criterion.

But we do not agree. Even though the articles might be about her and relating to her work in the field, she provided inadequate supporting materials to demonstrate the publications are one of the required publication types. The Director addressed the Petitioner's claims and evidence pertaining to *Jamaica Star* and them found inadequate and she does not contest that determination on appeal. Considering the material relating to *The Gleaner*, the Petitioner's supporting evidence she offers on appeal relating to this media derives from *Wikipedia*. With regard to information from *Wikipedia*, there are no assurances about the reliability of the content from this open, user-edited internet site.[1] *See United States v. Lawson*, 677 F.3d 629, 650–51 (4th Cir. 2012); *Badasa v. Mukasey*, 540 F.3d 909, 910–11 (8th Cir. 2008); *see also Sibanda v. Holder*, 778 F.3d 676, 680 (7th Cir. 2015).

The material from the *Jamaica Observer* suffers from a similar shortcoming. The Petitioner provides two forms of evidence relating to this publication and the first material is again from *Wikipedia.* We already explained why material from that resource is not reliable and does not meet the Petitioner's burden of proof.

The other documentation for this publication is the Jamaica Observer's Facebook page that contains the text: "Jamaica's No. 1 Newspaper" but does not offer any additional information in support of that statement. When USCIS evaluates whether a submitted publication is other major media, relevant factors include the relative circulation, readership, or viewership that should be compared to other similar statistics. *See generally* 6 *USCIS Policy Manual* B.1, https://www.uscis.gov/policymanual. The phrase "other major media" is generally accepted to mean a publication with significant reach and recognition, and it follows that we may reasonably require evidence of the same type of reach and recognition through circulation data. *Krasniqi v. Dibbins*, 558 F. Supp. 3d 168, 185 (D. N.J. 2021).

We are also not required to accept a publication's own claims relating to whether it qualifies as major media, as such self-serving claims are not sufficiently probative. *Id.* (citations omitted). Probative evidence is the type that "must tend to prove or disprove an issue that is material to the determination of the case." *Matter of E-F-N-*, 28 I&N Dec. 591, 593 (BIA 2022) (quoting *Matter of Ruzku*, 26 I&N Dec. 731, 733 (BIA 2016)); *see also* Evidence, *Black's Law Dictionary* (11th ed. 2019). Therefore, if some form of the Petitioner's evidence does not adequately prove their contention, then it is not probative. When combined with other favorable material, evidence that is not probative on its own

[1] Online content from *Wikipedia* is subject to the following general disclaimer, "WIKIPEDIA MAKES NO GUARANTEE OF VALIDITY. *Wikipedia* is an online open-content collaborative encyclopedia, that is, a voluntary association of individuals and groups working to develop a common resource of human knowledge. The structure of the project allows anyone with an Internet connection to alter its content. Please be advised that nothing found here has necessarily been reviewed by people with the expertise required to provide you with complete, accurate or reliable information. . . . *Wikipedia* cannot guarantee the validity of the information found here. The content of any given article may recently have been changed, vandalized or altered by someone whose opinion does not correspond with the state of knowledge in the relevant fields. *Wikipedia: General disclaimer*, Wikipedia (Apr. 6, 2024), http://en.wikipedia.org/wiki/Wikipedia:General_disclaimer.

could exist on a palette in which the Petitioner "paints a mosaic" that sufficiently demonstrates the Petitioner's claims. However, the Petitioner has not crafted such a tapestry here.

In summary, the Petitioner has not submitted evidence that meets the regulation's requirements relating to other major media.

While the Petitioner argues and submits evidence for one additional criterion on appeal relating to prizes or awards at 8 C.F.R. § 204.5(h)(3)(i), it is unnecessary that we make a decision on this additional ground because she cannot numerically meet the required number of at least three criteria. As the Petitioner cannot fulfill the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3), we reserve our evaluation of her claims under the prizes or awards criterion. *Patel v. Garland*, 596 U.S. 328, 332 (2022) (citing *INS v. Bagamasbad*, 429 U.S. 24, 25–26 (1976) (finding agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision)); *see also Matter of Chen*, 28 I&N Dec. 676, 677 n.1, 678 (BIA 2023) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

III. CONCLUSION

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. 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). Here, the Petitioner has not shown the significance of their 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). Moreover, the record does not otherwise demonstrate that the Petitioner has garnered national or international acclaim in the field, and they 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 their 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.