U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 36130068

Date: FEB. 5, 2025

Appeal of Nebraska Service Center Decision

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

The Petitioner is an educator and youth development facilitator 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 under 8 C.F.R. § 103.3. 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 alien 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 alien'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-step analysis. In the first step, 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 move to the second step to 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-step 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 earned her PhD in Engineering of Informatics and gained experience as an associate professor in her home country.

A. Evidentiary Criteria

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 seven of the regulatory criteria. The Director decided that the Petitioner satisfied one of the criteria relating to the authorship of scholarly articles but that she had not satisfied the criteria associated with prizes or awards, membership, judging, original contributions, leading or critical role, or high salary or remuneration. On appeal, the Petitioner claims eligibility under the same criteria. After reviewing all the evidence in the record, we agree with the Director's ultimate determination for each of the claimed criteria.

1. Lesser Prizes or Awards under 8 C.F.R. § 204.5(h)(3)(i).

The regulation requires: "Documentation of the alien'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). This criterion contains several evidentiary elements, all of which must be met to satisfy the regulation. According to the plain language of the regulation the evidence must establish: (1) the alien is the recipient of the prizes or the awards; (2) those accolades are nationally or internationally recognized; and (3) each prize or award is one for excellence in the field of endeavor.

The Petitioner provided four certificates of achievement from [redacted]. The Director determined that the Petitioner did not meet the requirements of this criterion as she did not demonstrate these certificates satisfied items 2 and 3 listed in the previous paragraph. Withing the appeal, the Petitioner presents several assertions relating to items 2 and 3 above, but never identifies any form of evidence that might corroborate that any of the certificates of achievement are "nationally or internationally recognized prizes or awards for excellence in the field of endeavor." The Petitioner's unsupported statements that her evidence meets the regulatory requirements have little evidentiary value and will not make a prima facie eligibility showing, much less satisfy their burden of proof. *See Matter of Mariscal-Hernandez*, 28 I&N Dec. 666, 673 (BIA 2022); *see also Matter of Azrag*, 28 I&N Dec. 784, 787 (BIA 2024).

As it stands, the Petitioner has not submitted evidence that meets the plain language requirements of this criterion.

2. Membership in Associations under 8 C.F.R. § 204.5(h)(3)(ii).

This criterion contains several evidentiary elements the Petitioner must satisfy. First, the Petitioner must demonstrate that she is a member of an association in her field. Second, the Petitioner must demonstrate both of the following: (1) the associations utilize nationally or internationally recognized experts to judge the achievements of prospective members to determine if the achievements are outstanding, and (2) the associations use this outstanding determination as a condition of eligibility for prospective membership.

After determining the Petitioner's claims and evidence were not sufficient to meet this criterion's requirements, the Director issued a request for evidence (RFE). The Director's decision noted that in response to the RFE, the Petitioner provided a letter from the organization, Professional Women Association "One Hundred Georgia Woman" reflecting the Petitioner has been an association member since 2018. The Director determined that the Petitioner did not meet the requirements of this criterion because she did not provide material to demonstrate the association "require[s] 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).

Now on appeal, the Petitioner submits several new forms of evidence under this criterion. Because both the regulation and the Director's RFE put the Petitioner on notice and gave her a reasonable opportunity to provide this evidence, we will not consider it for the first time on appeal. *See* 8 C.F.R. § 103.2(b)(11) (requiring all requested evidence be submitted together at one time); *Matter of Furtado*, 28 I&N Dec. 794, 801–02 (BIA 2024) (declining to consider new evidence on appeal when the filing party was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the denial); *see also Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533, 537 (BIA 1988).

While the Petitioner may present this new evidence in any new petition she files in the future, here, she has not submitted evidence that meets the plain language requirements of this criterion.

3. Participation as a Judge under 8 C.F.R. § 204.5(h)(3)(iv).

This criterion requires not only that the Petitioner was selected to serve as a judge, but also that she is able to produce evidence that she actually participated as a judge. Additionally, these duties must have been directly judging the work of others in the same or an allied field in which the Petitioner seeks an immigrant classification within the present petition. The Petitioner must submit evidence satisfying all of these elements to meet the plain language requirements of this criterion. The specific regulatory language follows: "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).

The Petitioner claimed and provided evidence relating to her election as the member of a commission for defense of training report of a bachelor's-level program in Information Technology. The Director determined that the Petitioner did not meet the requirements of this criterion. The Director acknowledged the Petitioner's claims and evidence but concluded that the material did not describe the nature of her role as a member of the commission in sufficient detail to determine if such action satisfies the regulatory requirements. The Director further decided the Petitioner had fallen short of demonstrating that this criterion should be read so broadly as to include a supervisory role in overseeing students and their work.

In the appeal, the Petitioner disagrees with the Director's determination under this criterion and claims her role was prestigious and restates much of the same claims she presented in her RFE response. But she does not directly grapple with the Director's findings that her role reviewing educational materials of undergraduates should be applied so broadly that we consider them to be "in the field" as this criterion mandates.

The Petitioner does not adequately explain how judging the performance of undergraduate students constitutes judging "the work of others in the same or an allied field." Undergraduates are not professionals and are not yet "in the field" as this criterion requires. Contrast the Petitioner's performance claimed here with serving as a member of a Ph.D. dissertation committee that makes the final judgment as to whether a candidate's body of work satisfies the requirements for a doctoral degree. The possibility exists for serving on such a dissertation committee to qualify under this criterion's requirements, as PhD candidates are often considered working professionals in their field—particularly in certain areas—and they are actively contributing to academic and professional knowledge in their discipline. We cannot say the same for the level of "judging" the Petitioner claims.

In summary, the Petitioner has not submitted evidence that meets the plain language requirements of this criterion.

4. Original Contributions of Major Significance under 8 C.F.R. § 204.5(h)(3)(v).

The primary requirements here are that the Petitioner's contributions in their field were original and they rise to the level of major significance in the field, rather than to a project or to an organization. *See Amin*, 24 F.4th at 394 (citing *Visinscaia v. Beers*, 4 F. Supp. 3d 126, 134 (D.D.C. 2013)). The regulatory phrase "major significance" is not superfluous and, thus, it has some meaning. *Nielsen v. Preap*, 586 U.S. 392, 415 (2019) (finding that every word and every provision in a statute is to be given effect and none should needlessly be given an interpretation that causes it to duplicate another provision or to have no consequence). Further, the Petitioner's contributions must have already been realized rather than being potential, future improvements. Contributions of major significance connotes that the Petitioner's work has significantly impacted the field. The Petitioner must submit evidence satisfying all of these elements to meet the plain language requirements of this criterion.

The Petitioner's claims surround her original published scientific work titled, [redacted]

The Director acknowledged correspondence that reflected the Petitioner's published work was being considered for inclusion for the trainings for the teachers of a training center in the upcoming academic year. The Petitioner claimed "[t]his implies her contribution of major significance to the field of

education involving innovative teaching methods and curriculum design focused on market-oriented skills. [Her] work likely contributed to bridging the gap between academic education and practical market needs in Georgia improving student employability and economic readiness."

The Director decided this evidence reflecting her work is being considered as training material does not demonstrate how it "equates to original contributions of major significance to the field." Stated differently, the Petitioner's possible future contributions are not yet realized.

And we agree with that assessment. That the Petitioner might provide a prospective benefit to the United States as a permanent resident is a separate requirement under the Act. *See* section 203(b)(1)(A)(iii) of the Act. While the evidence shows potential promise in the Petitioner's work, it does not establish 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 has yet to be determined or measured. This regulatory criterion requires petitioners to show they have already made a significant impact in their field. A Petitioner must establish the elements for the approval of the petition at the time of filing. 8 C.F.R. § 103.2(b)(1), (12). A petition may not be approved if the Petitioner was not qualified at the priority date, but expects to become eligible at a subsequent time. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). This evidence does not establish that, as of the priority date, the Petitioner had contributed to her field in a significant manner as required by the regulation.

5. High Salary or Significantly High Remuneration under 8 C.F.R. § 204.5(h)(3)(ix).

The plain language of this criterion requires a comparison against "others in the field." Salary information for those performing work in a related but distinct occupation with different responsibilities is not a proper basis for comparison. Additionally, average salary levels are not comparable when evaluating whether a salary was high "in relation to others in the field." *Strategati, LLC v. Sessions*, No. 3:18-CV-01200-H-AGS, 2019 WL 2330181, at *7 (S.D. Cal. May 31, 2019) (agreeing that average salary levels do not allow for an appropriate basis for comparison in determining a high salary "in relation to others in the field").

The Petitioner provided a bank statement and wage statistics from her home country. The Director determined that the Petitioner did not meet the requirements of this criterion as she did not offer material demonstrating her employment, and the average statistics she submitted did not serve as an adequate comparison to show her earnings were high in relation to others in the field.

Again in this appeal, the Petitioner submits several new forms of evidence. But as we noted above, because both the regulation and the Director's RFE put the Petitioner on notice and gave her a reasonable opportunity to provide this evidence, we will not consider it for the first time on appeal. *See* 8 C.F.R. § 103.2(b)(11); *Furtado*, 28 I&N Dec. at 801–02; *Soriano*, 19 I&N Dec. at 766; *Obaigbena*, 19 I&N Dec. at 537.

While the Petitioner may present this new evidence in any new petition she files in the future, here, she has not submitted evidence that meets the plain language requirements of this criterion.

6. Performance in a Leading or Critical Role under 8 C.F.R. § 204.5(h)(3)(viii).

We conclude that although the Petitioner satisfies the scholarly articles criterion, she does not meet the criteria regarding prizes or awards, membership, judging, original contributions of major significance, or high salary. While she argues and submits evidence for one additional criterion on appeal relating to performing in a leading or critical role at 8 C.F.R. § 204.5(h)(3)(viii), it is unnecessary that we make a decision on this additional ground because she cannot numerically meet the required number of criteria. As the Petitioner cannot fulfill the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3), we reserve the remaining issue. *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 Larios-Gutierrez De Pablo & Pablo-Larios*, 28 I&N Dec. 868, 877 n.8 (BIA 2024) (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 her eligibility as an alien 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.