U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 36862665

Date: FEB. 24, 2025

Appeal of Nebraska Service Center Decision

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

The Petitioner, a cinematographer, seeks first preference immigrant 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 the record did not establish that the Petitioner qualifies as an individual of extraordinary ability either as the recipient of a one-time achievement that is a major, internationally recognized award, or as someone who initially satisfied at least three of the ten required regulatory criteria listed at 8 C.F.R. § 204.5(h)(3)(i) – (x). The matter is now before us on appeal pursuant to 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 as an alien with extraordinary ability, a petitioner must demonstrate that:

- They have "extraordinary ability in the sciences, arts, education, business, or athletics;"
- They seek to continue work in their field of expertise in the United States; and
- Their work would substantially benefit the country.

Section 203(b)(l)(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 sustained

acclaim and recognition of their 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 they 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). The regulation at 8 C.F.R. § 204.5(h)(4) allows a petitioner to submit comparable material if the standards at 8 C.F.R. § 204.5(h)(3)(i)-(x) do not readily apply to the individual's occupation.

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

The Petitioner is a cinematographer whose work includes short films and music videos in the United States and her home country of Italy. The Petitioner's work has been showcased in film festivals, and she has also served as a judge at several film festivals, such as the [redacted] and [redacted]

The Petitioner does not claim or submit evidence to show that she received a major, internationally recognized award. She must therefore provide evidence showing that she satisfies at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i) – (x). The Petitioner claims that she meets the elements of four of these criteria, which are summarized below:

- (iii), Published material about the Petitioner;
- (iv), Participation as a judge of the work of others;
- (vii), Display of the Petitioner's work at artistic exhibitions; and
- (viii), Performance in a leading or critical role for distinguished organizations or establishments.

The Director determined, and we agree, that the Petitioner satisfied the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vii). On appeal, the Petitioner maintains her qualification for two additional criteria, which we will address in our discussion below.[1]

[1] Although the Director determined that the Petitioner did not meet the criterion 8 C.F.R. § 204.5(h)(3)(ii), which pertains to membership in associations requiring outstand achievements, the Petitioner did not claim, nor does she claim on appeal that she meets the requirements of this criterion. Any ground of ineligibility that is not raised on appeal is waived. *See Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (citing *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012)).

A. Published Material

The criterion at 8 C.F.R. § 204.5(h)(3)(iii) requires evidence which shows that material about the Petitioner and her work in the field of endeavor has been published in a professional or major trade publication or other major media. The title, date, and author of the material is also required along with any necessary translation.

The Director acknowledged that the Petitioner submitted articles where she was featured or mentioned but noted that several of the submitted articles did not identify an author. The Director determined that the record lacked evidence that the published material was printed in professional or major trade publications or other major media and pointed out that of the two sources containing published material about the Petitioner – *ritzherald.com* and *Buzzfeed* – cannot be deemed major media, citing the *Similarweb* global, country, and category rankings that the Petitioner provided for *ritzherald.com*.

On appeal, the Petitioner reiterates portions of the USCIS Policy Manual pertaining to this criterion and points to our general acceptance of using *Similarweb* as an analytics tool to show a publication's circulation data, which is often used to establish that a publication qualifies as major media. The Petitioner argues that *Il Fatto Quotidiano*, one of the publications containing an article about her, is a "major nationally distributed publication in Italy" and highlights the website's number of monthly visitors as an indicator of its major media status. She also lists the article's author and argues that it was included in the printout, despite the Director's finding to the contrary.

While the record supports the Petitioner's claim about the author's named being included in the article printout, we disagree with the Petitioner's reliance on the number of monthly website visitors as sufficient evidence of a publication's major media status. Here, the number of monthly visitors for the source in question is not accompanied by comparative data for similar online sources. As such, merely providing the number of monthly visitors for the source in question is not sufficient to establish that *Il Fatto Quotidiano* is a form of major media relative to similar online sources. And although the Petitioner's response to a request for evidence (RFE) included a printout of the *ilfattoquotidiano.it* "Traffic & Engagement" page in *Similarweb*, the comparative statistics, i.e., the global, country, and industry rankings, on that printout are illegible and preclude a meaningful comparison of this publication's rankings to those of similar publications.

We also note that *Il Fatto Quotidiano* is the only publication that the Petitioner specifically addresses on appeal. While she broadly mentions "the articles submitted with the Original Petition," she does not refer to any article specifically or state how the Director's discussion of previously submitted evidence was incorrect. (Emphasis added in original).

Further regarding the Petitioner's reliance on unpublished AAO decisions, we note that while our precedent decisions are binding on USCIS, unpublished decisions are not similarly binding. *See* 8 C.F.R. § 103.3(c). In addition, the Petitioner has not established that the facts of this petition are analogous to those in the unpublished decision. For instance, the Petitioner cites the circulation data provided in the unpublished decision, asserting that we deemed those numbers as sufficient to "surpass the threshold to be considered major media." However, as stated above, the Petitioner provided monthly visitor information, not circulation data as in the unpublished decision. She therefore has not established that findings in that decision are applicable in the matter at hand.

In light of the above, the Petitioner has not established that she meets this criterion.

B. Comparable Evidence

This regulatory provision provides petitioners the opportunity to submit comparable evidence to establish the person's eligibility, if it is determined that the evidentiary criteria described in the regulations do not readily apply to the person's occupation. *See generally* 6 USCIS Policy Manual F.2(B)(1), https://www.uscis.gov/policymanual. When evaluating such comparable evidence, officers must consider whether the regulatory criteria are readily applicable to the person's occupation and, if not, whether the evidence provided is truly comparable to the criteria listed in that regulation. *Id.*

In both the RFE and on appeal, the Petitioner states that she has assumed a leading or critical role as required to meet the criterion at 8 C.F.R. § 204.5(h)(3)(viii). However, she states that she cannot meet the entirety of this criterion because "[c]inematographers typically do not work for organizations" and the criterion requires that in addition to demonstrating that she has performed in a leading or critical role, the Petitioner must also show that she performed that role within the context of an establishment or organization with a distinguished reputation. *See* 8 C.F.R. § 204.5(h)(3)(viii). The Petitioner stresses the rarity of being hired to work on all projects of a single production studio and states that it is common for cinematographers to be "selected and sought out to work on individual projects." She therefore claims that she has assumed a leading or critical role on various "highly prestigious and distinguished" film production projects that she lists and discusses.

The Petitioner has provided evidence to support her claim concerning the mostly project-based work environment of most cinematographers, and she has also established her critical role on various film projects. However, the record lacks sufficient evidence showing that the Petitioner has assumed a leading or critical role on projects with a distinguished reputation. For instance, the Petitioner lists and discusses past projects and explains how certain projects were recognized, such as through awards or nominations at various film festivals. However, the record lacks corroborating evidence from the awarding entity to show that the Petitioner's projects won awards or were otherwise recognized as claimed. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (stating that assertions must be supported with relevant, probative, and credible evidence). In other instances, the Petitioner lists actors and film crew members with whom she worked, highlight ways in which these individuals have been recognized in other projects. However, the Petitioner does not explain how this information about unrelated projects is relevant to the matter at hand, which requires evidence establishing that projects in which the Petitioner assumed a leading or critical role have a distinguished reputation.

Accordingly, the Petitioner has not established that she meets the criterion at 8 C.F.R. § 204.5(h)(3)(viii) through the submission of comparable evidence.

C. O-1 Nonimmigrant Status

We note that the record reflects that the Petitioner received O-1 status, a classification reserved for nonimmigrants of extraordinary ability. Although USCIS has approved O-1 nonimmigrant visa petitions filed on behalf of the Petitioner, the prior approval does not preclude USCIS from denying an immigrant visa petition which is adjudicated based on a different standard – statute, regulations,

and case law. USCIS is not precluded from denying a Form I-140 immigrant petition after approving a prior nonimmigrant petition. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990). Furthermore, our authority over the USCIS service centers, the office adjudicating the nonimmigrant visa petition, is comparable to the relationship between a court of appeals and a district court. Even if a service center director has approved a nonimmigrant petition on behalf of an individual, we are not bound to follow that finding in the adjudication of another immigration petition. *See La. Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, at *2 (E.D. La. 2000).[2]

III. CONCLUSION

The Petitioner has not shown that she met either a one-time award, or three of ten initial criteria. The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields. 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 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 that she is one of the small percentage who have 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).

ORDER: The appeal is dismissed.

[2] *See also generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(3).