U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28980905

Date: DEC. 14, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, a journalist, 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 the Petitioner did not satisfy at least three of the initial evidentiary criteria. 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 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

Because the Petitioner has not indicated or established her receipt of 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). Although the Petitioner claimed to meet five criteria, the Director determined the Petitioner fulfilled only one – judging under 8 C.F.R. § 204.5(h)(3)(iv). On appeal, the Petitioner maintains she qualifies for four additional categories of evidence.[1]

A. Evidentiary Criteria

> *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).

USCIS first determines whether the published material was related to the person and the person's specific work in the field for which classification is sought.[2] The published material should be about the person, relating to the person's work in the field, not just about the person's employer and the employer's work or another organization and that organization's work.[3] USCIS then determines whether the publication qualifies as a professional publication, major trade publication, or other major media publication.[4]

The record reflects the Petitioner submitted screenshots of a transcript for an interview entitled, [redacted] posted on www.npr.org. The interview is about Chinese Swimmer [redacted] rather than about the Petitioner. In fact, the

[1] We consider the Petitioner's prior eligibility claims not raised or contested on appeal to be abandoned. An issue not raised on appeal is waived. *See, e.g., 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)).

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

[3] *Id.*

[4] *Id.*

Petitioner makes two statements in the interview about [redacted]. The interviewer does not ask any questions about the Petitioner, discuss the Petitioner, or provide any content regarding the Petitioner. Because the npr.org interview does not show published material about the Petitioner relating to her work, the evidence does not satisfy the plain language of this regulatory criterion.

In addition, the Petitioner offered screenshots of a podcast from www.cjr.org entitled, [redacted] The screenshots provide a brief summary of the podcast indicating that "[the Petitioner], who is on the editorial staff at the [redacted], sat down with [redacted] of CJR, to discuss the flow of outbreak information in the Chinese media, how many coronavirus fatalities may go unreported, and her last interview with citizen journalist [redacted], before he disappeared." The Petitioner, however, did not provide a transcript of the podcast. Evidence may include documentation such as print or online newspaper or magazine articles, popular or academic journal articles, books, textbooks, similar publications, or a transcript of professional or major audio or video coverage of the person and the person's work.[5] Without the transcript, the Petitioner did not demonstrate the podcast reflects published material about her relating to her work. Nonetheless, based on the summary, the podcast appears to be about various topics other than about the Petitioner regarding her work.

Moreover, the Petitioner presented screenshots of an article posted on www.talkingbiznews.com entitled, [redacted] The article is about an "emerging business model for the struggling world journalism" and discusses the publication, [redacted]. The person and the person's work need not be the only subject of the material; published material that covers a broader topic but includes a substantial discussion of the person's work in the field and mentions the person in connection to the work may be considered material about the person relating to the person's work.[6] Although the website article references the Petitioner's article and credits the Petitioner as the author, the article's topic is about [redacted] rather than published material about the Petitioner and a discussion of her work. *See, e.g., Negro-Plumpe v. Okin,* 2:07-CV-820-ECR-RJJ at *1, *7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles regarding a show are not about the actor).

Finally, although the Petitioner presented sufficient evidence demonstrating www.npr.com represents a major medium, the Petitioner did not establish the major status of www.cjr.org and www.talkingbiznews.com. Regarding www.cjr.org, the Petitioner provided screenshots from www.similarweb.com showing a global rank of 145,424, a country rank of 45,146, and category rank of 3,135. However, the Petitioner did not demonstrate the significance or relevance of these numbers to establish the major status of the website.[7] Further, the Petitioner did not offer any evidence relating to the status of www.talkingbiznews.com.

For the reasons discussed above, the Petitioner did not show she meets every element of this criterion.

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[5] *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1).
[6] *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1).
[7] *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1) (providing that in evaluating whether a submitted publication is a professional publication, major trade publication, or other major media, relevant factors include the intended audience (for professional and major trade publications) and the relative circulation, readership, or viewership (for major trade publications and other major media).

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).

The Petitioner claims eligibility for this criterion based on the citations of her work by others, invitations for speaking engagements, and recommendation letters. In order to satisfy the regulation at 8 C.F.R. § 204.5(h)(3)(v), USCIS determines whether the person has made original contributions in the field.[8] USCIS then determines whether the original contributions are of major significance to the field.[9] Examples of relevant evidence include, but are not limited to: published materials about the significance of the person's original work; testimonials, letters, and affidavits about the persons original work; documentation that the person's original work was cited at a level indicative of major significance in the field; and patents or licenses deriving from the person's work or evidence of commercial use of the person's work.[10]

At the outset, the Petitioner submits new evidence on appeal.[11] Because the Petitioner was put on notice and given 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 Soriano*, 19 I&N Dec. 764, 766 (BIA 1988) (declining to consider new evidence submitted on appeal because "the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the denial").

Regarding citations, the record reflects a few internet articles reporting on the Petitioner's [redacted] article. Although the coverage of the Petitioner's article shows some attention by the field, the Petitioner did not establish that such limited reporting reaches the level of major significance.[12] Here, the Petitioner does not explain or demonstrate how the number of citations or references to her individual articles resulted in original contributions of major significance in the field. For example, she did not show that the interest in her work is unusually high in her field or how they compare to other articles that the field recognizes as having been majorly significant. Although reporting by others indicate that her work has received some attention from the field, the Petitioner did not establish that her particular articles represent majorly significant contributions in the field.

Moreover, the Petitioner contends "that major professional publications published her original works of major significance including *Foreign Policy* and *The Diplomat* as well as numerous national and international media outlets, including but not limited to, *The Nation*, *Japan Times*, *Vice*, *Ms.*, *VICE*, *The New Yorker* and others." However, the Petitioner did not establish that the publication of her articles in national or international media inevitably demonstrates the major significance of her work. Further, a publication that bears a high circulation may reflect on the publication's overall reputation, it does not show an author's influence or the impact in the field or that every article published in a

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[8] *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1).
[9] *Id.*
[10] *Id.*
[11] Although the Petitioner asserts that she submits this evidence "again," the record does not reflect that she provided this evidence at either the initial filing of the petition or in response to the Director's request for evidence.
[12] *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1) (providing the published research that has provoked widespread commentary on its importance from others working in the field, and documentation that is has been highly cited relate to others' work in that field, may be probative of the significance of the person's contributions to the field of endeavor).

"prestigious" publication automatically indicates a contribution of major significance in the field. Publications and presentations are not sufficient under 8 C.F.R. § 204.5(h)(3)(v) absent evidence that they were of "major significance." *See Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009), *aff'd in part*, 596 F.3d 1115.

Similarly, as it relates to her speaking invitations, the record contains evidence that the Petitioner served as a panelist for [ ] and an invitation to speak at [ ] However, the Petitioner did not demonstrate what resulted from her appearance at as a panelist or if she even spoke at the engagement. Although the appearance and invitation of the Petitioner at engagements may signify interest in the Petitioner and her work, those acts alone do not establish the major significance of her work. The Petitioner, for example, did not show that the engagements garnered widespread attention of her articles and work or impacted the field in a major way. Furthermore, the Petitioner did not demonstrate how appearing at one event or being requested to speak at another event shows an interest commensurate with major significance.

As it pertains to her recommendation letters, while they highly praise the Petitioner for her skills and abilities, they do not contain sufficient information establishing that her articles and work qualify as contributions of major significance in the field. Although the Petitioner asserts that "these letters went into a very detailed explanation as to the variety of way [the Petitioner's] original contributions have had a major impact on the field," the letters point to examples of her work and broadly claim that they are majorly significant without articulating or justifying their opinions. For instance, N-M- discussed two of the Petitioner's articles and named some other publications that cited or covered the articles.[13] While the letter claims that "so many citations and features by other major media outlets and professional publications further showcases its significant impact in the field," N-M- did not further elaborate and explain how the number of publications that referenced the Petitioner's articles translates into a contribution of major significance. In addition, N-M- did not, for example, discuss how the articles have impacted or influenced the field beyond being referenced by a handful of other publications or journalists.

Similarly, R-A- stated that "[t]he prestige of these publications is indicative of the major significance of [the Petitioner's] original published works." Again, R-A- did not show how simply publishing in a "prestigious" or well-known publication shows evidence of a contribution of major significance, nor are we convinced that every article published in a prestigious or well-known publication automatically qualifies as a contribution of major significance in the field. Further, R-A- claimed that the Petitioner's "articles stand among the most widely read and expertly informed scholarly works on these subjects, thereby further contributing to their major significance in the field." However, R-A- did not further elaborate and justify her claim of being "the most widely read and expertly informed." R-A-, for instance, did not cite to any figures or other facts corroborating her assertions.

Likewise, H-W-F- indicated two of the Petitioner's articles and asserted that "[b]oth are original contributions that have educated the masses, including the journalism field." However, H-W-F- did not further articulate and support his claims. H-W-F- did not explain how the Petitioner's work has "educated the masses" or provide examples to warrant his opinion.

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[13] Although we discuss a sampling of letters specifically addressed in the Petitioner's brief, we have reviewed and considered the other letters in the record.

Detailed letters from experts in the field explaining the nature and significance of the person's contribution may also provide valuable context for evaluating the claimed original contributions of major significance, particularly when the record includes documentation corroborating the claimed significance.[14] Submitted letters should specifically describe the person's contribution and its significance to the field and should also set forth the basis of the writer's knowledge and expertise.[15] In this case, the letters lack specific, detailed information explaining how the Petitioner has made original contributions of major significance in the 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).

For the reasons discussed above, considered both individually and collectively, the Petitioner has not shown she satisfies this criterion.

> *Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.* 8 C.F.R. § 204.5(h)(3)(vi).

The Petitioner claims eligibility for this criterion based on her journalistic articles appearing online, such as [redacted] website.[16] As defined in the academic arena, a scholarly article reports on original research, experimentation, or philosophical discourse.[17] It is written by a researcher or expert in the field who is often affiliated with a college, university, or research institution.[18] Scholarly articles are generally peer reviewed by other experts in the field of specialization.[19] In general, it should have footnotes, endnotes, or a bibliography, and may include graphs, charts, videos, or pictures as illustrations of the concepts expressed in the article.[20] Here, the record does not show that the Petitioner's journalistic articles contain the characteristics of scholarly articles, as considered in the academic arena. The Petitioner did not establish that she wrote the articles as a researcher or expert rather than as a reporter writing a story about a topic or newsworthy event, as is typical of a journalistic reporter. Furthermore, the Petitioner is affiliated with publications reporting on news, noteworthy events, and other media stories rather than associated with colleges, universities, or other research institutions. Moreover, none of her articles contain the features of academic scholarly articles, such as footnotes or bibliographies. For these reasons, the Petitioner did not show that her journalistic articles qualify as scholarly articles within the purview of academia.

For other fields, a scholarly article should be written for learned persons in that field.[21] "Learned" is defined as having "profound knowledge gained by study."[22] Learned persons include all persons having profound knowledge of a field.[23] Here, the Petitioner did not show that her journalistic articles were written for learned persons in the journalistic field or for other particular learned persons.

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[14] *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1).
[15] *Id.*
[16] The Petitioner also provides new evidence on appeal, which we will not consider as it was not presented before the Director. *See* 8 C.F.R. § 103.2(b)(11); *Matter of Soriano*, 19 I&N Dec. at 766.
[17] *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1).
[18] *Id.*
[19] *Id.*
[20] *Id.*
[21] *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1).
[22] *Id.* (citing to the *Oxford English Dictionary's* definition of "learned").
[23] *Id.*

Moreover, the Petitioner did not demonstrate that the publications in which her articles were posted online were intended for learned persons rather than a general audience or readers who subscribe to the online publications. Further, the Petitioner did not establish that any of the online publications are geared toward persons having profound knowledge in journalism or other particular field.

Accordingly, the Petitioner did not establish that her material qualifies as scholarly articles under this criterion.

B. 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. Many Form I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. *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).[24]

III. CONCLUSION

The Petitioner did not establish she satisfies the criteria relating to published material, original contributions, scholarly articles. Although the Petitioner claims eligibility for the leading or critical role criterion under 8 C.F.R. § 204.5(h)(3)(viii), we need not reach this additional ground because she cannot fulfill the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3). We also need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. Accordingly, we reserve these issues.[25]

Nevertheless, we have reviewed the record in the aggregate, concluding it does not support a conclusion 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 those progressing toward the top. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994) (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

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

[25] *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).

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). Here, 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. 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 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). The record does not contain sufficient evidence establishing the Petitioner among the upper echelon in her field.

For the reasons discussed above, the Petitioner has not demonstrated 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.