U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31672126

Date: JUL. 25, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, an actor, 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 Director of the Nebraska Service Center denied the petition, concluding that while the Petitioner met the initial evidence requirements of the requested classification, the record did not establish that she had sustained national or international acclaim and was one of the small percentage at the top of her field. 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 establish eligibility as an individual of extraordinary ability, a petitioner (or anyone on the petitioner's behalf) must establish that they:

- Have extraordinary ability in the sciences, arts, education, business, or athletics;
- Seek to enter the United States to continue work in their area of extraordinary ability; and that
- Their entry into the United States will prospectively substantially benefit the United States.

Extraordinary ability must be demonstrated by evidence of sustained national or international acclaim as well as extensive documentation that their achievements have been recognized in the field. Section 203(b)(1) of the Act.

The implementing regulation further states that 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." It also

sets forth a multi-part analysis. A petitioner can demonstrate international recognition of their achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If such evidence is unavailable, then they must alternatively provide evidence that meets at least three of the ten listed criteria, which call for evidence about other awards they may have received, published material about them in qualifying media, and their authorship of scholarly articles, among other types of evidence. 8 C.F.R. §§ 204.5(h)(2),(3).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination, assessing whether the record shows that the individual possesses the acclaim and recognition required for this highly exclusive immigrant visa classification. *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 has worked as an actor in theater, television and film in her native Armenia, and in [redacted] was named an Honored Artist of the Republic of Armenia. She intends to continue working as an actor in the United States.

Because the Petitioner has not indicated or established that she 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 Director found that the Petitioner met four of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), relating to lesser nationally or internationally recognized awards, published material about her and her work, her participation as a judge of the work of others, and the display of her work at artistic exhibitions or showcases. But in his final merits determination, the Director determined that the evidence did not establish that the Petitioner had enjoyed sustained national or international acclaim and that she was one of the small percentage of actors at the top of the field. On appeal, the Petitioner submits new evidence and asserts that she also meets additional evidentiary criteria. In addition, the Petitioner asserts that the Director did not notify her of some of the deficiencies in the originally submitted evidence, and did not conduct the final merits analysis in accordance with United States Citizenship and Immigration Services (USCIS) policy. After reviewing all of the evidence in the record, per the analysis below we agree with the Director's conclusion that the record does not establish that the Petitioner has the required sustained national or international acclaim for classification as an individual of extraordinary ability, or is one of the small percentage of actors at the top of the field.

Because we agree with the Director's conclusion that the Petitioner meets the four evidentiary criteria noted above, and thus that she meets the initial evidence requirements for classification as an individual of extraordinary ability, we need not consider the Petitioner's claims to additional criteria made on appeal. We will rather consider the evidence submitted in support of all of the claimed criteria in reviewing the Director's final merits determination.

As noted above, once an individual has established that they meet the initial evidence requirement, we conduct a final merits determination. In a final merits determination, we examine and weigh the

totality of the evidence to determine whether an individual has sustained national or international acclaim and is one of the small percentage at the very top of their field of endeavor, and that their achievements have been recognized in the field through extensive documentation. As extraordinary ability is an elite level of accomplishment whose recognition necessarily entails a judgement call, it cannot be established through meeting at least three of the evidentiary criteria alone. The final merits determination is the ultimate statutory inquiry of whether the applicant has extraordinary ability as demonstrated by sustained national or international acclaim. *Amin v. Mayorkas*, 24 F.4th 383, at 395 (2022).

As an initial matter, we will not consider the new evidence offered by the Petitioner with her brief. Where, as here, a Petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). In support of her submission of new evidence of published material about her, her activities as a judge of the work of other actors, and her performances, the Petitioner asserts that the Director went beyond the plain language of the corresponding evidentiary criteria when analyzing this evidence, and that she was therefore not provided with sufficient notice of the insufficiency of the evidence she initially submitted in the Director's request for evidence (RFE). But she makes these assertions in the context of the Director's final merits analysis, in which, as explained above, the overall requirement for the classification is applied, not that of the individual criteria. Thus the Director did not err in going beyond the plain language of the corresponding evidentiary criteria when conducting his final merits analysis, and we will not consider these assertions when evaluating the evidence below. Further, the Director's RFE provided a detailed analysis of the deficiencies in the initial evidence of published material about the Petitioner[1], and reminded her (in bold type) that in addition to meeting at least three of the evidentiary criteria, she must also establish that she possesses the high level of expertise required for the requested classification.

In making that determination in his final merits analysis, the Director acknowledged the Petitioner's receipt of two nationally recognized awards in her field: the [redacted] for Best Actress, from the [redacted] in 2012, and the Honored Artist of the Republic of Armenia in [redacted] However, he noted that the Petitioner received both awards several years before the filing of her petition, and that her eligibility for the classification must be shown at the time of filing. While the evidence of the Petitioner's awards cannot be evaluated apart from the totality of the record, we agree that it does not aid in demonstrating her continuing acclaim and standing as one of the small percentage at the top of her field at the time her petition was filed.

The Petitioner asserts in her brief that the Honored Artist award is a lifetime achievement award, and thus that "time does not obscure the value and/or significance of this award." Although Chapter 5, Article 34 of the section of the Armenian statute concerning honorary titles states that it is given to artists for "for their high mastery" and "great merit in the development of art," neither the statute nor the profiles of other actor recipients (some of whom were relatively young actors) show that it is comparable to a lifetime achievement award honoring decades of contributions.[2] And while it

[1] The Director acknowledged in the RFE that the criteria relating to the Petitioner's participation as a judge of the work of others and the display of her work at artistic exhibitions had been met.

[2] Article 28 indicates that the honorary title of People's Artist of the Republic of Armenia, which is granted to artists "for

demonstrates a certain level of national recognition for the Petitioner's mastery and merit up until the time it was awarded, it cannot show continuing recognition beyond that point.

Regarding the evidence of the Petitioner's many performances in theater, television, and film, the Director concluded that it demonstrated her steady work as a professional actress for three decades, but did not show that she stood out among her peers or was the leading actress or "main draw" of these performances. In responding to this conclusion on appeal, the Petitioner refers to mainly new evidence, which we will not consider on appeal, but also some of the previously submitted evidence. This previously submitted evidence shows that her roles in movies and recent television shows have been primarily supporting. For example, an article published on the website armlur.am on [redacted] 2015 discusses, in part, her role on the television sitcom [redacted], but states only that she appeared on the show and played a cook. Other evidence in the record, including a letter from fellow actor M-P-, shows that she acted in movies including [redacted]. While the former was Armenia's submission to the 2001 Academy Awards for [redacted] it was not selected as a nominee and was poorly reviewed in *Variety*, and in any case the Petitioner did not play a leading role. As for the latter film, M-P- lauds the Petitioner's performance in his letter and in three media articles about the film, but the record does not show that this film was either commercially successful or critically acclaimed. We note that the evidence does not demonstrate that the websites on which these articles were published are prestigious or well-known at the national or international level such that they evidence widespread acclaim for this role.

The Petitioner has played leading or starring roles in several of the theater productions in which she has participated for the [redacted] since 2004, as stated in the letter from the theater's director. She performed at least one of these plays, [redacted] as a solo performer in 2021, and this performance was singled out by the Director of the [redacted] for praise in an article published on the website aravot.com on [redacted], 2021. But the evidence of the reputation and distinction of the theater and its troupe of actors, which includes descriptions of its history and commendation/appreciation certificates from a community group and the county of [redacted] does not show that the theater is considered a prestigious or elite venue such that the Petitioner's performances there, leading or otherwise, place her amongst the small percentage at the top of the field.

As already mentioned, the record includes several articles published in Armenian newspapers and websites that are interviews of her or otherwise discuss her and her work as an actor. In response to the Director's statement regarding the number of articles published about her during her lengthy career, the Petitioner asserts that the quality of the evidence, including the articles about her, should be a determining factor in the final merits determination. We first note that section 203(b)(1)(A)(i) of the INA requires "extensive documentation" of the petitioner's acclaim and recognition. In addition, the quality of media articles as evidence of sustained acclaim and recognition as one of the small percentage at the top of the field is dependent upon the content of the articles and the prestige and reach of the medium. While the articles mainly focus on the Petitioner and her career, discussing previous roles she played and her future plans, many were published in media of limited reach, such as *Pakagits Daily*, *Interlocutor of Armenia*, *TV Mall Weekly*, and *TV Channel*. While other media in

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their mastery… for creating high art… and for significant contribution to the development of art," appears to be more analogous to a lifetime achievement award, although the index to this chapter also mentions "highest titles" and medals granted by the Republic of Armenia.

which articles about the Petitioner and her work as an actor were published have broader popularity, such as Tert.com, the totality of this evidence, when considering both quality and quantity, is not indicative of the widespread acclaim required for the requested classification.

The Petitioner also asserts that the Director's conclusions regarding her participation as a jury member in the 2020 and 2021 editions of the [redacted] of Painting, Recitation and Theatrical Art held by the [redacted] went beyond the plain language of the evidentiary criterion at 8 C.F.R. § 204.5(h)(3)(iii). As noted above, in his analysis as part of the final merits determination, the Director correctly considered whether the Petitioner's selection for this activity was based on her established and sustained acclaim, and whether her judging of the work of children resulted in further acclaim. While the Petitioner's willingness to lend her expertise to the development of young actors is laudable, we agree with the Director's conclusion that the record does not show that it appreciably contributed to her national or international acclaim and standing in her field.

The Petitioner has enjoyed a lengthy career as an actor in her native country, and has at times in that career achieved a certain level of acclaim for her work at the national level. But the record does not establish that the Petitioner has enjoyed a level of commercial or critical recognition for her work as an actor that reflects that she is one of the small percentage at the top of her field.

III. CONCLUSION

We have reviewed the entire record and conclude that it does not establish that the Petitioner has the sustained acclaim and standing in her field required for the classification sought.

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 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.