U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF V-S-

DATE: JUNE 20, 2017

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, an operetta performer, seeks classification as an individual of "extraordinary ability" in the arts. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference E11 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 Texas Service Center denied the Form I-140, Immigrant Petition for Alien Worker. While the Director concluded that the Petitioner satisfied the initial evidence requirements set forth at 8 C.F.R § 204.5(h)(3), he conducted a final merits analysis and found that she had not established her sustained national or international acclaim, that she is one of the small percentage at the very top of the field of endeavor, or that her achievements have been recognized in the field through extensive documentation.

On appeal, the Petitioner submits additional evidence and maintains that she has sufficiently shown her extraordinary ability in the field.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 203(b)(1)(A) of the Act states:

> Aliens with extraordinary ability. -- An alien is described in this subparagraph 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 two options for satisfying this classification's initial evidence requirements. First, a petitioner can demonstrate a one-time achievement (that is a major, internationally recognized award). Alternately, he or she must provide evidence that meets at least three of the 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 (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). This two-step analysis is consistent with our holding that the "truth is to be determined not by the quantity of evidence alone but by its quality," as well as the principle that we examine "each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true." *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

II. ANALYSIS

A. Evidentiary Criteria

The Petitioner is an operetta singer specializing in the classical-crossover style who has performed throughout Russia, Europe, and the United States. She has not shown that she is the recipient of a qualifying major, internationally recognized award. As such, she must provide at least three types of documentation listed under 8 C.F.R. § 204.5(h)(3)(i)-(x).

The Director concluded that the Petitioner met the participation as a judge of the work of others criterion under 8 C.F.R. § 204.5(h)(3)(iv). The record supports the Director's finding that she satisfies this criterion as it reflects, for instance, that she served as a jury member at the [redacted] known as '[redacted] and the [redacted] known as '[redacted]' The Director also found that she met the display at artistic exhibitions or showcases criterion at 8 C.F.R. § 204.5(h)(3)(vii) through her roles in operetta productions, including [redacted] and '[redacted]' at the [redacted] and we agree with that determination.

Finally, the Director determined that she met the high salary or remuneration criterion at 8 C.F.R. § 204.5(h)(3)(ix) based on compensation she received for performing at several events.[1] The record, however, does not demonstrate that the Petitioner meets this criterion, which requires evidence "that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field." The Petitioner provided letters from agencies with whom she has worked stating that her earnings for specified performances were equivalent to or exceeded other well-known performers. For instance, a letter from production center ' ' indicates that the Petitioner was among the highest compensated performers at the following events: the a 2010 concert at the ; the the Christmas Concert at the of the ; and an International Festival of However, the Petitioner did not provide documentation to support the statements regarding her earnings or those of the other performers, nor does the record include sufficient information and evidence to determine how those amounts compare to the field at large. The Petitioner also offers a separate letter from the president of noting that her compensation is very high compared to the average salary among Russian people generally. Although she submitted accompanying information about average Russian wages, the plain language of the criterion requires comparison against others in the Petitioner's field. Here, the record does not include sufficient information and evidence about the remuneration of others in her field to establish that the Petitioner's earnings are significantly high in comparison.

While we withdraw the Director's determination with regard to the remuneration criterion, we find that the Petitioner has satisfied the criterion at 8 C.F.R. § 204.5(h)(3)(iii), requiring published material about the individual in professional or major trade publications or other major media, based on a published review of her debut album, ' ' in the magazine [2] Accordingly, the Petitioner has provided the required initial evidence that meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

B. Final Merits Determination

In the final merits determination, we analyze the Petitioner's accomplishments and weigh the totality of the evidence to determine if her successes are sufficient to demonstrate that she has extraordinary ability in the field of endeavor. Specifically, a petitioner's extraordinary ability must be demonstrated by sustained national or international acclaim and be at a level that puts him or her among the small percentage at the very top of the field, and his or her achievements must have been recognized in the field through extensive documentation. *See* section 203(b)(1)(A)(i) of the Act;

[1] Specifically, the Director stated that the Petitioner had been paid amounts between $8,000 and $15,000 for each of 10 listed events.

[2] Although the record lacks supporting evidence or comparative statistics regarding the claimed distribution figure for several other articles in the record describe the publication as a popular magazine. Accordingly, we find the Petitioner has demonstrated, by a preponderance of the evidence, that the publication qualifies as major media.

8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20. In this matter, we determine that the Petitioner has not shown her eligibility.

On appeal, the Petitioner cites the regulation at 8 C.F.R. § 214.2(o)(3)(ii) for the contention that extraordinary ability in the arts means "distinction" such that the individual is "renowned, leading, or well-known," and is a lesser standard than in the sciences, business, or athletics. However, O-1 nonimmigrants of extraordinary ability are a separate classification. Unlike in the O-1 nonimmigrant context, the E11 immigrant classification at issue here does not define extraordinary ability differently depending on an individual's area of expertise. Instead, as noted above, the relevant regulations require each petitioner to demonstrate that he or she "is one of that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2).

While the record includes evidence of several awards that the Petitioner won, she has not demonstrated they are nationally or internationally recognized for excellence in her field, or that they establish a high level of acclaim for her work. The Director noted that two of the awards are based upon competitions that limit participation to youth. For example, the Petitioner submitted a copy of her award indicating that participants from Russia and Europe competed for the title "best young operetta singer." Although the Petitioner maintains on appeal that "it is typical and customary for singers and vocalists' competitions" to "limit age and to divide contestants per age categories," she has not provided sufficient evidence to demonstrate the national or international recognition of awards from the competitions, either in the youth category or otherwise.[3] Nor has she established that competing in such a contest and receiving an award places her in the small percentage at the top of the field.

The Petitioner also provided evidence of honorary designations that she has received, including a award from the , and a award of honor from the . The Petitioner correctly notes on appeal that the criterion does not require awards to have been based on a competition. However, she has not demonstrated that these honors constitute nationally or internationally recognized awards for excellence in her field. Rather, the certificates show that the award from the embassy acknowledged her contributions to Russian culture in the United States, and the award was for outstanding service in the military or contributions to culture. The Petitioner has not established that these awards are indicative that she is among the small percentage at the very top of her field of endeavor.

The record also includes evidence that the Petitioner received a prize award and was named a "laureate" in the . The award certificate indicates that the purpose of the festival is "the promotion of military spirit and contemporary frontier service, military friendship and solidarity, and fraternity of frontiers." The Petitioner provided an article from a military publication describing the contest and reflecting that the participants include both amateur and professional artists as well as "civilian border authorities" of the Russian federation and their

[3] She did not show, for instance, national or international level press coverage of the events.

families. The documentation is not sufficient to demonstrate that this award has commanded a national or international level of recognition for excellence in her field. As the record does not show that the Petitioner competed with other top singers in her field, the award has limited value in demonstrating her acclaim.

Finally, on appeal, the Petitioner asserts that the Director erred in not considering an award for the short film " " which was presented after the time of filing. She maintains that because she recorded songs for the soundtrack before submitting the petition, her subsequent award should be considered. The Petitioner has not demonstrated, however, that she was the recipient of an award for this film, or that the short film's award was based upon her performance rather than the accomplishments of the recording cast or production as a whole. Overall, the submitted awards do not reflect that the Petitioner "is one of that small percentage who have risen to the very top of the field of endeavor," or that she has a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990).

While the record includes numerous published articles about the Petitioner, we do not find that, as a whole, they reflect sustained national or international acclaim.[4] Several of the articles appear in military publications and local or regional newspapers. She has also been featured in multiple publications intended for Russian-American communities in the United States since her arrival in 2013, including three stories in the quarterly women's magazine [5] Although the Petitioner provided self-reported distribution figures for many of the publications, she did not offer sufficient comparative data to support a finding that they qualify as major media, nor has she proven that such coverage meaningfully demonstrates her status among the small percentage at the top of her field.

As noted above, the Petitioner also provided evidence that a Russian music magazine included a review of her debut album " " which the record indicates is her sole album to date. The review speaks positively of the Petitioner, calling her "a talented soprano vocalist." However, it does not present her as an acclaimed or well-known singer or indicate that the album has been a commercial success, nor does the record contain other evidence establishing the album's popularity relative to others in the genre.

In addition, the Petitioner offered an article entitled "Russian romances sounded in a Christmas program in " from the culture section of international newswire agency publication, The article mentions the Petitioner as one of the performers in a concert at a popular Russian restaurant. It is not primarily about her, however, but instead summarizes

[4] While we discuss only a sampling of these articles, we have reviewed and considered each one.

[5] A letter from the editor-in-chief of indicates that an issue featuring the Petitioner on the cover had a circulation of 10,000 copies "distributed from the Atlantic to the Pacific coast of USA, in many Russian Stores and cultural centers." While the Petitioner contends that the publication is also available online and "reaches additional hundreds of thousands of readers worldwide," she has not offered sufficient evidence to support that statement, nor is it consistent with letter from editor-in-chief, who identifies the magazine's target audience as "women who immigrated to the [United States] from Russia and former Soviet Republics."

the songs included in the program. Further, it does not indicate or establish that she has achieved national or international acclaim.

Finally, the record contains evidence that, subsequent to the petition's filing, the Petitioner's work has been reported in the newspaper [redacted] a biweekly publication with a circulation of 20,000 and 10 million [redacted] visitors monthly, as well as a documentary web-cast on "[redacted]" an international multimedia broadcasting service. While these publications qualify as major media and demonstrate that the Petitioner's recognition is growing, the contents of the articles themselves do not indicate that she is a nationally or internationally acclaimed singer, but rather that she is a talented singer who is gaining attention in the Russian-American community. For instance, an article entitled "[redacted]' from the '[redacted]' website discusses a [redacted] concert given by the Petitioner and her husband, an accordionist, and states that they are "gaining new prominence in the new country." Similarly, the two articles in [redacted] report on well-received concerts given by the Petitioner and her husband in the [redacted] area. We do not find such coverage consistent with an individual among the small percentage at the very top of her field or reflective of the level of acclaim required for this highly restrictive classification.

The Petitioner has also offered evidence that she has been invited to participate as a judge for several international singing and vocal competitions. An evaluation of the significance of the Petitioner's judging experience is acceptable under *Kazarian,* 596 F. 3d at 1121-11, to determine if such evidence is indicative of the extraordinary ability required for this highly restrictive classification. The Petitioner provides evidence that she has judged several singing competitions such as the [redacted] known as '[redacted]' the [redacted]' and the [redacted] known as '[redacted]' Both '[redacted]' and "[redacted]' are youth or amateur contests and the promotional literature for the '[redacted]' contest states that it includes contestants such as "military personnel, including soldiers, veterans, and members of their families." Overall, the Petitioner has not shown that her judging experience sets her apart from others in her field, such as by providing evidence that she has served as a judge of acclaimed operetta singers or of a prestigious national or international competition rather than students or amateurs. Accordingly, the evidence under this criterion does not support a finding that she "is one of that small percentage who has risen to the very top of the field of endeavor." *See* 8 C.F.R. § 204.5(h)(2).

The Petitioner asserts that she has made artistic contributions of major significance through her numerous performances in operetta productions such as "[redacted]' and '[redacted]' at the [redacted] Several letters in the record note that she was the youngest soloist in the theater's history. She also provided evidence that she has performed in the classical-crossover style for the soundtrack of several television and film productions including "[redacted]' '[redacted] and the television series '[redacted][6] The record does not include

[6] The record includes a letter from [redacted] a songwriter, film composer and producer, who states that the Petitioner "sang choir parts in the '[redacted] section" of the movie "[redacted]" was "featured in the

sufficient evidence to demonstrate that her selection to work on the above productions reflects national or international acclaim. Further, the Petitioner did not demonstrate that her performances garnered attention reflecting that her "achievements have been recognized in the field of expertise." *See* section 203(b)(1)(A)(i) of the Act and 8 C.F.R. § 204.5(h)(3). For example, the record is not indicative of her performances bringing critical acclaim, drawing record crowds, or receiving a high amount of press coverage.

The record additionally includes several recommendation letters attesting to the Petitioner's soprano style and vocal ability. The letters discuss the Petitioner's skills as a singer but do not identify original contributions of major significance in the field.[7] For example, an internationally known and professor of voice at comments that the Petitioner "is a musician of the highest caliber seldom found: the clear lyrical quality of her vocals, her natural ability combined with the artistry and deep feeling which imbues her performances." Similarly, several conductors submitted letters attesting to the Petitioner's outstanding talent as a and her style. For example, conductor and director of the award winning musical ensemble ' ' wrote that the Petitioner is "critically acclaimed and commercially successful."

Similarly, symphony conductor noted that the Petitioner is "an exceptionally beautiful ' who has "enriched the music culture and traditions of this nation." While these letters offer praise for the Petitioner's vocal strength and reputation, they do not indicate that her work represents an original contribution. For example, the evidence does not demonstrate that the Petitioner's music has influenced others in the performing arts fields, that any of her specific works are widely viewed as important pieces of contemporary opera, or that her original work otherwise equates to artistic contributions of major significance in the field. *See Visinscaia*, 4 F. Supp. 3d at 134-35 (upholding a finding that a ballroom dancer had not met this criterion because she did not corroborate her impact in the field).

In describing the Petitioner's accomplishments, we note that some of the letters and several of the articles highlight that she received notes of appreciation for her music from and For instance, the Petitioner's producer, stated that "two works written by me and performed by [the Petitioner] were recognized and praised by the Both articles in also mention that the Petitioner received letters of acknowledgment from the two The Petitioner's interview with indicates that she received the letters in response to sending a recording of her music to each of the monarchs. The record does not include copies of the letters to support their claimed significance.[8]

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chorale" for a song in the television show ' " and performed songs and wrote lyrics for the soundtrack to the television series ' '

[7] We discuss only a sampling of these letters, but have reviewed and considered each one.

[8] While not in the record, the letters appear on the press page of the Petitioner's website, last accessed on June 19, 2017. In one letter, principal secretary thanks

As noted above, the Petitioner provided evidence satisfying the display criterion under 8 C.F.R. § 204.5(h)(3)(vii). As it is expected that an operetta singer, such as the Petitioner, would perform in a musical setting at concerts and recitals, we will evaluate the extent to which the display of her work is reflective of acclaim consistent with this highly restrictive classification. Although the Petitioner's documentary evidence reflects multiple ensemble performances at prestigious venues, such as and the in she did not establish that her performances garnered attention in a manner consistent with sustained national or international acclaim. For example, she did not demonstrate that her concerts brought critical acclaim, drew record crowds, or raised attendance. Without evidence distinguishing the Petitioner's concerts and performances from others in her field, she has not shown that she has risen to the very top of the field.

Furthermore, the Petitioner contends that she has performed in a leading role for a distinguished organization under the regulation at 8 C.F.R. § 204.5(h)(3)(viii). In general, this is evident from the role, its duties, and how it fits within the overall hierarchy of the organization. A critical role is apparent from a petitioner's impact on the entity. Here, the Petitioner provided information and evidence that she performed in operetta productions including, ' ' and at the While she contends that her performances at the theater constitute a critical role, the record does not include evidence that her performances brought acclaim to the theatre, drew notable crowds, raised attendance, or were otherwise responsible for the success or standing of the establishment. She has also offered evidence that she is a distinguished member of the and serves as an official representative in the United States,[9] but has not demonstrated that this position is significant to its success or standing. Furthermore, she does not offer proof that it enjoys a distinguished reputation in the field of operetta.

On appeal, the Petitioner maintains that she also held a leading role with the where she worked at the center as a "specialist" "raising awareness and knowledge" of patriotic and military songs with the general population. However, the documentation does not show where the position of specialist fits into the hierarchy of the organization so as to demonstrate her leading role, and does not reflect that she contributed to the organization in a way that was significant to its success or standing, so as to demonstrate her critical role. Furthermore, she has not provided sufficient supporting documentation to show that the organization enjoys a distinguished reputation in the performing arts. In summary, the submitted evidence for the Petitioner's roles in organizations does not substantiate her sustained national or international acclaim, and or her status as being among the very top of the field.

Mr. for his kind letter to the and for sending her a CD, and states that the composition "was received with genuine interest." In the second letter, a to states: ' has been so touched by the response to her special birthday and I am to thank you very much for your good wishes which greatly appreciates."

[9] A letter from the deputy chairman of the board of the states that the Petitioner has the authority to conduct negotiations regarding joint creative projects in the United States.

As discussed previously, the Petitioner has not offered comparative salary statistics or other evidence that her remuneration is significantly above the average singer in her field. Nor has she shown that it is consistent with the small percentage of opera singers at the top of the field, indicating that she has achieved national or international acclaim.

In summary, the Petitioner's achievements in the aggregate confirm that she is a talented operetta singer. She has gained the respect of her employers, cast members, and artistic collaborators, who believe she is capable of contributing to the operetta, and to the performing arts field. Her achievements at this stage of her career, however, do not demonstrate that she has sustained national or international acclaim or is already one of the small percentage at the very top of her field of endeavor.

III. CONCLUSION

For the foregoing reasons, the Petitioner has not shown that she is eligible for classification as an individual of extraordinary ability.

ORDER: The appeal is dismissed.

Cite as *Matter of V-S-*, ID# 338544 (AAO June 20, 2017)