U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 35643260

Date: MAR. 24, 2025

Appeal of Texas Service Center Decision

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

The Petitioner seeks first preference immigrant classification for the Beneficiary, a composer, 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 Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner had demonstrated the Beneficiary's extraordinary ability in the totality of the circumstances. 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

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).

II. ANALYSIS

The Petitioner claims that the Beneficiary received a major, internationally recognized award. However, because the Petitioner has satisfied at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), we decline to reach and hereby reserve the issue. *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 alternative issues on appeal where an applicant is otherwise ineligible).

As the Petitioner has submitted the requisite initial evidence, we will evaluate whether the Petitioner has demonstrated, by a preponderance of the evidence, that the Beneficiary has sustained national or international acclaim and that she is one of the small percentage at the very top of the field of endeavor, and that her achievements have been recognized in the field through extensive documentation. In a final merits determination, we analyze a 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. *Kazarian*, 596 F.3d at 1119-20. In this matter, we determine that the Petitioner has not shown the Beneficiary's eligibility.

The Beneficiary is a composer. She attended and graduated from the [redacted] College of Music. Since then, she has worked as a composer, arranger, pianist, and songwriter. As noted in the Director's decision, the Beneficiary has won a lesser prize, received press coverage, and has participated in artistic exhibitions or showcases. The record[1], however, does not demonstrate that her personal and professional achievements rise to a level of a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990).

Regarding media coverage, the Petitioner presented a number of articles about the Beneficiary. First, we observe that several of the articles do not comply with translation requirements. Any document in a foreign language must be accompanied by a full English language translation, and a certification

[1] While we may not discuss every document submitted, we have reviewed and considered each one. Some of the articles about the [redacted] were published after the filing of the petition. A petitioner must meet all of the eligibility requirements of the petition at the time of filing. 8 C.F.R. §§ 103.2(b)(l), (12).

from the translator that the English language translation is complete and accurate, and that they are competent to translate from the foreign language into English. 8 C.F.R. § 103.2(b)(3). The Beneficiary submitted certificates of translation that she completed, stating that she is "familiar" with the relevant languages. Further, one of the documents, published by the [redacted], denotes at the top that it was processed through Google Translate. This is not an acceptable form of translation, as documents must be translated by a translator under 8 C.F.R. § 103.2(b)(3). Several of the relevant translations also lack copies of the original documents. It is not possible to meaningfully determine whether the translations for this evidence are accurate when we lack original copies. Other articles and video interviews lack a proper certificate of translation[2] or any certificate of translation at all. Documents not translated in accordance with the plain language requirements of 8 C.F.R. § 103.2(b)(3), do not have any evidentiary weight and will not be considered. Additionally, we observe that having the Beneficiary act as the translator for her documents submitted to support this petition lessens the degree to which we can rely on the translations.

The Petitioner also submitted evidence of podcast interviews and English language transcripts of several video interviews. However, the transcripts are not accompanied by original transcripts in the native language, and the Petitioner did not provide transcripts of the podcast conversations. As noted above, documents not translated in accordance 8 C.F.R. § 103.2(b)(3), do not have any evidentiary weight and will not be considered.

A great deal of the articles the Petitioner presented were concerning the release of the Beneficiary's songs. While these articles are informational about songs the Beneficiary released, they do not denote any significant information about the state of Beneficiary's career and appear aimed at marketing the songs. The few remaining articles show interest in the Beneficiary's career, but do not demonstrate an individual who is at the top of her industry. For example, the article in [redacted] magazine is relatively short in length and is limited to discussing only a few of her 2018 projects. In summation, the articles presented do not demonstrate that such press coverage is consistent with the sustained national or international acclaim necessary for this highly restrictive classification. *See* section 203(b)(1)(A) of the Act; *see also Chawathe*, 25 I&N Dec. at 375-76 (standing for the proposition that to determine whether a petitioner has met their burden under the preponderance standard, we consider the quality, relevance, probative value, and credibility of the evidence).

The Petitioner has presented a number of letters showing the Beneficiary's contributions to various compositions for television commercials and other projects. Most of the letters refer to events from 2013 to 2015. Though the letters provided commend the Beneficiary's work, they do not detail an individual at the top of her field. For instance, one of the letters from the musician [redacted] states that the Beneficiary has worked for her as a member of her band, and others detail her work as an assistant composer for other individuals and projects. The record does not reflect that these subordinate positions demonstrate someone who has risen to the very top of their field as required for this visa classification.

The Petitioner provided a few of the Beneficiary's work contracts and publishing agreements. The Petitioner did not supply information to allow us to assess if these are indicative of someone at the top

[2] The certificates in question include the statement "I certify that this is an accurate transcription of the above-referenced interview" and is signed by the Beneficiary. This does not comport with 8 C.F.R. § 103.2(b)(3).

of their field. For instance, the Petitioner did not provide evidence that the payments reflected were of such a level as to denote the Beneficiary is at the top of her field. These documents are not adequate to show by a preponderance of the evidence, that the Beneficiary is of the small percentage at the very top of the field of endeavor. *Kazarian,* 596 F.3d at 1115; *Chawathe*, 25 I&N Dec. at 375-76.

We observe that while the Beneficiary's receipt of two [redacted] and two bronze medals from the [redacted] are important, the receipt of these is not sufficient to establish that the Beneficiary is among the top of her field. Although Petitioner submits evidence indicating that other recipients of the [redacted] have gone on to receive more significant awards, the record lacks evidence demonstrating the Beneficiary has received similar renown, or that her receipt of the award received the same level of recognition. While this is positive evidence of her career progression, it is not indicative of someone who has risen to the very top of her field.

We acknowledge that the Beneficiary has previously worked in O-1B status, and that this classification is reserved for nonimmigrants of extraordinary ability in the arts. However, the prior approval does not preclude USCIS from denying an immigrant visa petition which is adjudicated based on a different statute, regulations, and case law. The nonimmigrant and immigrant categories have different criteria, definitions and standards. Extraordinary ability in the field of arts in the nonimmigrant O-1 category means distinction. 8 C.F.R. § 214.2(o)(3)(ii). In the immigrant context, "extraordinary ability" reflects that the individual is among the small percentage at the very top of the field. Moreover, each petition is separate and independent and must be adjudicated on its own merits, under the corresponding statutory and regulatory provisions.

In summary, the Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for those 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). The Petitioner's evidence confirms that the Beneficiary has received attention from those in her field. However, she has not submitted extensive documentation exhibiting, by a preponderance of the evidence, that she has attained a level of expertise placing her among that small percentage that has risen to the very top of the field of endeavor. *Chawathe*, 25 I&N Dec. at 375-76.

III. CONCLUSION

For the reasons discussed above, the Petitioner has not demonstrated the Beneficiary's eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons. In visa petition proceedings, it is a petitioner's burden to establish eligibility for the immigration benefit sought. The Petitioner has not met that burden here.

ORDER: The appeal is dismissed.