U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF A-S-

DATE: OCT. 17, 2017

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a violinist, 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 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 Form I-140, Immigrant Petition for Alien Worker, concluding that the Petitioner did not satisfy, as required, at least three of the ten initial evidentiary criteria.

On appeal, the Petitioner submits a brief and states that she meets four of the ten criteria. In addition, she maintains that she has established eligibility for the classification.

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

I. LAW

Section 203(b)(1)(A) of the Act makes visas available to qualified foreign nationals 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 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). If that petitioner does not submit this evidence, then he or she must provide 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).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material 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

The Petitioner is a violinist, who is currently performing with the [redacted]. As she has not stated or established her receipt of a major, internationally recognized award, she must present evidence satisfying at least three of the ten criteria listed under 8 C.F.R. § 204.5(h)(3)(i)-(x). The Director determined that the Petitioner did not meet any of the criteria. Upon a review of the record in its entirety, we find that she has satisfied two criteria, relating to the display of her work at artistic exhibitions, and her leading and critical role in an organization with a distinguished reputation. *See* 8 C.F.R. § 204.5(h)(3)(vii)-(viii). She, however, has not met a third criterion.

[1] The Petitioner indicates that she is in nonimmigrant O-1 status. *See* section 101(a)(15)(O)(i) of the Act, 8 U.S.C. § 1101(a)(15)(O)(i). This prior approval does not preclude us from denying the instant immigrant petition, which is adjudicated based on a different standard. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. U.S. Dep't of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Brothers Co. Ltd.*, 724 F. Supp. 1103 (E.D.N.Y. 1989).

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. 8 C.F.R. § 204.5(h)(3)(i).

On appeal, the Petitioner maintains that she meets this criterion based on her achievements in the [redacted] the [redacted] and the [redacted] She has not satisfied this criterion because she has not verified her receipt of two of these three prizes or awards, and she has not presented sufficient documentation showing that these accolades constitute "nationally or internationally recognized prizes or awards for excellence in the field," as required under the regulation.

The Petitioner submits two resumes. One of them indicates that she won (1) first, second, and third prizes at the [redacted] between 1996 and 2004; (2) multiple first prizes at the "competition of [redacted] between 1997 and 2002; and (3) a first prize at the [redacted] in 2009. The other resume does not note her participation in the [redacted] or the [redacted] In addition, the record lacks sufficient documents, such as certificates or letters, from the award-granting entities substantiating her receipt of prizes from these two competitions.

Assuming *arguendo* that the Petitioner won prizes from the [redacted] or the [redacted] she has not demonstrated that they are recognized on a national or international level. According to documents that she has submitted, the [redacted] is held annually in the town of [redacted] in Czech Republic, and is "for Youth up to the age of sixteen." Nine jury members, who are "outstanding artists and professionals" and "prominent personalities in musical and publicity branch," evaluate the performances and select the winners. Other documents provide that the participants of the [redacted] are between 6 and 18 years old, who are placed into different competitive categories based on their age.

The Petitioner maintains that prizes from these two competitions meet this criterion because some of the competitions' past winners have become accomplished musicians. While this may be true, it does not illustrate the recognition of the events or their prizes. At issue is whether the prizes themselves are recognized nationally or internationally, not whether some of the past winners have achieved successes after competing in the events. The Petitioner also states that these competitions are open to musicians from different countries, and thus, she concludes, constitute international competitions. Under this criterion, a petitioner must demonstrate the national or international recognition of the prizes and awards. A showing of a diverse pool of participants, without more, does not establish the requisite recognition. The record includes documents showing that some musicians list their accomplishments at these competitions on their online profiles, and that some musical festivals and venues note in their promotional materials that certain performers received prizes from the competitions. While this information might indicate some degree of recognition for the competitions, the record lacks sufficient evidence verifying that the events, or their prizes or

awards, are recognized on a national or international level. For example, the Petitioner has not submitted credible documentation, such as articles from major media or major trade publications with a national or international circulation, discussing and confirming the recognition of the competitions, which attract only young participants.

Similarly, the Petitioner has not demonstrated that her first prize from the [redacted] which is open to musicians younger than 25 years old, meets this criterion. She presents documents from the event organizer, confirming that she was one of the winners in the senior division in 2009. She maintains that her accomplishments at this event satisfy this criterion, because [redacted] references this competition in an online profile for one of its resident fellows. The Petitioner reasons, "the mere fact that [redacted] highlights this award makes it a nationally or internationally recognized prize." The record, however, does not support this position. While [redacted] reference to a prize might demonstrate that it enjoys a certain level of recognition, without additional corroboration, this reference is insufficient to show national or international recognition. Moreover, according to the Petitioner's submissions, this competition offers $1,000 to its senior division first prize winners. The Petitioner has not illustrated that this sum is indicative of the national or international recognition of the prize. In addition, the record lacks evidence verifying that her receipt of a first prize in 2009 attracted any media attention, specifically, from an outlet that has a nationally or international circulation,[2] which might confirm the recognition of the prize.

Furthermore, while the Petitioner has won other awards and prizes, including those from [redacted] and [redacted] she has provided minimal information on these accomplishments and she has not sufficiently illustrated their recognition on a national or international level. In light of the above, she has not met this criterion.

> *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).

Although the Petitioner has presented published materials, she has not demonstrated that they are "about [her] . . . [as] relating to [her] work" or that they appeared in "professional or major trade publications or other major media," as required under the regulation. As supporting evidence, she has submitted a number of articles posted on the websites of [redacted] and [redacted]

[2] In her appellate brief, the Petitioner appears to argue that information posted on websites of musical venues and organizations constitutes material published in professional or major trade publications or major media. She, however, does not point to any documents in the record that support her position that these websites are qualifying publications or media.

The Petitioner has not established that these articles are about her. The published materials discuss and review performances in which she participated along with many musicians. Some of the articles mention her once, while the others reference her a few times. While the published materials need not illustrate that she is the star of a performance or the best in the field, she must nonetheless show that the articles are about her. *See Muni v. INS*, 891 F. Supp. 440, 445 (N.D. Ill. 1995); *Racine v. INS*, No. 94 C 2548, 1995 WL 153319, at *6 (N.D. Ill. Feb. 27, 1995). She has not demonstrated the articles that reviewed and reported on the performances and musical events are "about" her. *See, e.g.*, *Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ, 2008 WL 10697512, at *7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles relating to a show are not about the actor).

Regardless, she has not established the websites that posted the articles constitute "professional or major trade publications or other major media." The record includes a printout of Facebook page, stating that it is "a popular web community for creators, performers and fans of new music" and that it "[f]eatures blogs, reviews, discussions and a calendar of events geared mostly to music created by living composers and performers." indicates that it "is a vibrant forum on live performance in and that "[s]parked by reflections from seasoned critics in theater, music, dance, and performance art, the site invites discussion on the arts and their meaning in our lives." The record does not contain traffic data of these websites, which are relevant in demonstrating their status as either "major trade publications" or "major media." The Petitioner has also not illustrated that these websites, a "web community" and an online "forum," constitute professional publications.

The remaining article appeared in the website. The Petitioner has not submitted information about this publication. Instead, she offers online printouts about a performance that the article reviewed. Without documents relating to the nature and reach of this website and publication, the Petitioner has not illustrated that it qualifies as a professional publication, a major trade publication, or major media. In light of the above, she has not met this criterion.

> *Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.* 8 C.F.R. § 204.5(h)(3)(iv).

The Petitioner has not submitted sufficient evidence demonstrating that she meets this criterion. As support documents, she offers email correspondence showing that she was on "audition committee" and was involved with the auditions for a violinist, a viola player, and a cellist. The emails do not identify her responsibilities or duties, and she has not presented documentation, such as letters from the orchestra, verifying that as a member of the audition committee she judged other musicians' performances. Significantly, the record contains a number of reference letters, including those from individuals associated with the but none of them indicates that the Petitioner has judged the work of other musicians. Without additional corroboration, she has not satisfied this criterion.

Evidence of the display of the alien's work in the field at artistic exhibitions or showcases. 8 C.F.R. § 204.5(h)(3)(vii).

The record contains sufficient documents showing that the Petitioner meets this criterion. To demonstrate she satisfies this criterion, the Petitioner must establish that her work was on display, and that the venues were artistic exhibitions or showcases. The record confirms that she has been a violinist for many years, and has displayed her work in musical competitions, concerts, and other artistic performances. She therefore meets this criterion.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. 8 C.F.R. § 204.5(h)(3)(viii).

The Petitioner has demonstrated that she meets this criterion based on her employment with the The record is sufficient to establish that she has performed in a leading or critical role for her employer. Specifically, according to the chief executive officer of the orchestra, when the concertmaster[3] was on sabbatical during the 2014-2015 season, the Petitioner "frequently [sat] in the leadership roles of Assistant Concertmaster, Associate Concertmaster, and Concertmaster," and that she has since "[sat] in these critical chairs as temporary vacancies occur." The record also illustrates that the orchestra has a distinguished reputation, as it is "one of the finest orchestras in the United States and was designated a by the The Petitioner thus meets this criterion.

III. CONCLUSION

Although the Petitioner satisfies two criteria, she has not submitted the required initial evidence that establishes her receipt of a one-time achievement or shows that she meets at least three of the ten criteria. As a result, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. Nevertheless, we have reviewed the record in the aggregate, and conclude that it does not sufficiently demonstrate the Petitioner's sustained national or international acclaim or that her achievements have been recognized in the field through extensive documentation. For these reasons, she has not established she qualifies for classification as an individual of extraordinary ability.

ORDER: The appeal is dismissed.

Cite as *Matter of A-S-*, ID# 591780 (AAO Oct. 17, 2017)

[3] The documents in the record indicate that a concertmaster is the second-most important person in an orchestra after the conductor and is the leader of the first violin section.