U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF O-P-

DATE: OCT. 18, 2017

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, an interior designer, seeks classification as an individual of extraordinary ability in business. *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 the record did not establish, as required, that the Petitioner met at least three of the ten initial evidence requirements or that she intended to continue working in her area of expertise.

On appeal, the Petitioner submits additional evidence and asserts that she meets the necessary criteria.

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

I. LAW

Section 203(b)(1)(A) of the Act describes qualified immigrants for this classification as follows:

> (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. Alternatively, he or she must provide 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).[1] 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 an interior designer who formed her own design company in the Ukraine in 2013 and proposes to operate a similar business in the United States. Initially, she maintained that she had met three criteria by presenting published material about herself, evidence of contributions of major significance in the field, articles she authored, and verification of a high salary. 8 C.F.R. § 204.5(h)(3)(iii), (v), (vi), and (ix). The Director concluded that she did not satisfy any of them. On appeal, the Petitioner contends that she submitted the necessary published material as described on the U.S. Citizenship and Immigration Services (USCIS) website, that her designs constitute qualifying contributions, that her articles are comparable to scholarly ones, and that she sufficiently documented a high salary. For the reasons discussed below, we find that she has not satisfied at least three criteria.

> *Published materials 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).

The record contains an article about the Petitioner in [redacted] She provided two unsigned letters on the magazine's letterhead. The one that includes the printed name [redacted] lists the circulation as 15,000 and affirms that the magazine showcases "talent, from architects to

[1] This case discusses 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).

[2] The translation lists no author and one does not appear included in the foreign language version. An unsigned letter on the magazine's letterhead identifies the author as [redacted]

builders and interior and landscape designers." It does not indicate whether the distribution is local or national. She also offered a list of "Ukrainian magazines focused on contemporary design, architecture, products and interiors" which reflects that [redacted] has the second highest circulation. The document bears no indicia of the source of the information. The Director concluded that the Petitioner had not demonstrated that the publication was a professional or major trade journal or other major media.

The Petitioner has not demonstrated that the article appeared in qualifying media. On appeal, she relies on information that appeared on the USCIS website with respect to entrepreneurs seeking this classification.[3] That guidance advised that petitioners could present (1) copies of publications, including the name, title, date, and author; (2) documents showing the significance of the published material; circulation information for the publication; and (3) any other published material, outside the scope of marketing materials created to sell their products or promote their companies. She maintains that the article in [redacted] falls under the third option. The regulation requires that the pieces appear in professional or major trade journals or other major media. A reference to the limited value of marketing items on the USCIS website does not negate that regulatory language. As the evidence in the record does not sufficiently establish the authorship or circulation of the article, the Petitioner has not satisfied the plain language of this criterion.

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 provided photographs of her work for [redacted] an upscale dress shop, and the Ukrainian television network [redacted] Within the exhibit relating to this criterion, she also included the article in [redacted] and one she authored in [redacted] Finally, the record contains several reference letters. The Director concluded that the evidence did not demonstrate that the Petitioner had made original contributions of major significance in the field of interior design. On appeal, the Petitioner maintains that the photographs of her work, along with the [redacted] article's favorable description of one of her designs, satisfy this criterion. The photographs picture designs for a formal dress showroom at [redacted] and the waiting area, kitchen, and hallway of [redacted] The reference letters are from clients, designers, and an architect.

The photographs and articles do not sufficiently demonstrate that the Petitioner's contributions have been of major significance in the field of interior design. These items, along with the letter from [redacted] general director of [redacted] confirm that she is a successful interior designer who has completed projects. The article in [redacted] describes [redacted] as having "attracted a lot of attention in the professional community for its unique lighting and mix of classical and modern design." While the Petitioner's designs are original and may have attracted some attention, this article does not suggest that other designers have been influenced by her in their own work at a level consistent

[3] The information the Petitioner relied on no longer appears on the USCIS website, but may be viewed at: https://web.archive.org/web/20150107081346/http://www.uscis.gov/eir/visa-guide/eb-1-extraordinary-ability/understanding-eb-1-requirements-extraordinary-ability (accessed October 17, 2017)

with contributions of major significance. Finally, while [redacted] may be a leading network in the Ukraine, the fact that the Petitioner devised their waiting area, kitchen, and hallway does not imply that her creations have impacted the field of interior design.

The letters from clients also do not provide enough information to support a finding that the Petitioner has contributed to the field in a major way. The letters from clients include ones from [redacted] chief executive officer of [redacted] a marketing director whose home the Petitioner helped renovate; [redacted] director of [redacted] and [redacted] a boutique owner. These letters affirm satisfaction with the results of her work, characterizing it as "innovative," "a good value," "invaluable, "exceptional, and "creative." These letters do not, however, explain how she has influenced or impacted the field at a level consistent with a contribution of major significance.

The letters from colleagues confirm that other designers have taken notice of the Petitioner's work, but do not suggest she has had a significant impact in the field. [redacted] a partner of the [redacted] design studio in [redacted] advises that she has watched the Petitioner's career "blossom" and that she is a "'rising star' in the interior design field." [redacted] notes that she took notice of the international influence on the Petitioner's designs when they appeared in design magazines, but does not suggest that her designs have inspired other designers in the Ukraine. [redacted] director of [redacted] praises the Petitioner's talent, knowledge of trends, and ability to express her client's aspirations. [redacted] does not, however, suggest that the Petitioner has initiated any trends. [redacted] an architect in New York, describes meeting her at a [redacted] meeting and "learning from her experiences." While he has benefited from his exposure to her, he does not detail a larger influence in the field. For all of the reasons discussed above, the Petitioner has not established that her original designs rise to the level of a contribution of major significance in the field. She has therefore not satisfied 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 submitted her two articles in [redacted] one reviewing the trends on display at a New York exhibition and the other discussing the benefits of window use and placement. The Director concluded the articles were not scholarly. On appeal, the Petitioner acknowledges that the articles are not scholarly, but requests that we consider them as comparable evidence under 8 C.F.R. § 204.5(h)(4), which allows for such documentation where certain criteria do not readily apply to her occupation. Specifically, she states: "It is generally not the case that interior designers publish scholarly articles." Then, however, rather than relying on the articles she authored, she contends that the [redacted] article written about her work satisfies this criterion.

The Petitioner has not sufficiently supported her request to rely on comparable evidence. For example, she does not provide an expert opinion confirming that there are no scholarly journals in interior design. She also does not explain how articles by others about her work are comparable to her own authorship. We have already considered the article about her under the published material criterion to which it

directly relates and will not review it as comparable evidence under this criterion. More relevant are the two articles she wrote. Even if we were to accept that this criterion does not readily apply to interior designers, she must also demonstrate that her articles are comparable to scholarly ones appearing in professional or major trade publications or other major media.

The Petitioner has not demonstrated that her two articles for [redacted] are comparable to the evidence contemplated by this criterion. Specifically, she has not shown that articles appearing in any magazine are comparable to those vetted for a professional or major trade publication or other major media. Rather, the record includes evidence demonstrating the commercial nature of the publication, such as promotional materials for advertisers boasting that the magazine "communicates with experts and companies that can become your customers." They do not confirm a specific circulation or distribution. The document showing the circulation of [redacted] does not identify the source of its data. As she has not corroborated the scope of the magazine that featured her articles, she has not verified that they are comparable evidence under this criterion. Even if we accepted them as satisfying this criterion, she would meet only one criterion.

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field. 8 C.F.R. § 204.5(h)(3)(ix).

The Petitioner supplied the letter from her client, [redacted] advising that the price for her design services was $10,500. He subsequently explained that the endeavor lasted six weeks. She also offered a blog post indicating that interior designers in the Ukraine typically request a salary equivalent to $346.21 and receive $281.96 over an unspecified period. In response to the Director's request for evidence, the Petitioner affirmed that this amount represented a monthly salary while she states that it is a weekly salary on appeal. Finally, she included an article informing that the average monthly salary in the Ukraine for an officer manager of a middle sized company is $177. The Director concluded that a single job could not demonstrate that the Petitioner earns a high salary. On appeal, the Petitioner contends that earning $10,500 over six weeks when interior designers typically receive a weekly salary of only $281.96 satisfies this criterion.

The Petitioner has not demonstrated her personal salary. The letter from [redacted] advises that he agreed to a budget and that "the price for her interior design services was $10,500." He does not specify whether that amount constituted her salary or the payments to her sole proprietorship, which might have included overhead costs and reimbursement for design fixtures. The Petitioner has not shown that it is meaningful to compare a design budget paid to a company, even a sole proprietorship, with the monthly or weekly salary of an interior designer. For this reason, the Petitioner has not satisfied this criterion.

III. CONCLUSION

The Petitioner is not eligible because she has not submitted the required initial evidence of either a one-time achievement or documents that meet at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x). Thus, we need not fully address the totality of the materials in a final merits

determination. *Kazarian*, 596 F.3d at 1119-20. Nevertheless, we advise that we have reviewed the record in the aggregate, concluding that it does not support a finding that the Petitioner has established the level of expertise required for the classification sought.

ORDER: The appeal is dismissed.

Cite as *Matter of O-P-*, ID# 597153 (AAO Oct. 18, 2017)