U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF R-B-B-

DATE: SEPT. 28, 2017

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, an Indian classical dancer, seeks classification as an individual of extraordinary ability in the sciences. *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 had satisfied one of the initial evidentiary criteria, of which she must meet at least three.

On appeal, the Petitioner provides previously submitted documentation and a brief, stating that she satisfies at least three criteria.

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

I. LAW

Section 203(b)(1)(A) of the Act makes visas available to qualified 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 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 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); *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 an Indian classical dancer who has performed at dance festivals and events throughout the world. Because the Petitioner has not indicated or established that she has received a major, internationally recognized award, she must satisfy at least three of the ten criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). In denying the petition, the Director found that the Petitioner met the artistic display criterion under 8 C.F.R. § 204.5(h)(3)(vii).

On appeal, the Petitioner maintains that she meets two additional criteria: published material under 8 C.F.R. § 204.5(h)(3)(iii) and leading or critical role under § 204.5(h)(3)(viii).[1] We have reviewed all of the evidence in the record, and conclude it does not support a finding that the Petitioner satisfies the plain language requirements of at least three criteria.

> *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*

[1] While the Petitioner previously claimed eligibility for the criteria pertaining to membership under 8 C.F.R. § 204.5(h)(3)(ii) and commercial successes under 8 C.F.R. § 204.5(h)(3)(x), she does not continue to do so on appeal, nor does the record support a finding that she meets them. Accordingly, we will not further address these criteria in our decision.

> *shall include the title, date, and author of the material, and any necessary translation.* 8 C.F.R. § 204.5(h)(3)(iii).

The Petitioner argues that she meets this criterion based on being featured in [redacted] and [redacted] Regarding [redacted] the submitted article is about a [redacted] performing in Switzerland. While the article mentions the Petitioner as one of the dancers, it is not published material about her. Articles that do not pertain to a petitioner do not meet this regulatory criterion. *See, e.g., Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at *1, *7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles regarding a show are not about the actor). Moreover, the Petitioner did not include the date of the article as required by the regulatory criterion. Further, the Petitioner did not demonstrate that the newspaper is a professional or major trade publication or other major medium.

As it relates to [redacted] the Petitioner asserts that "[s]he was featured [i]n her traditional [redacted] costume which paved her way to various organizations and charitable services in India." Although the Petitioner provided a copy of a magazine page, she did not present an English language translation. Any document in a foreign language must be accompanied by a full English language translation. 8 C.F.R. § 103.2(b)(3). The translator must certify that the English language translation is complete and accurate, and that the translator is competent to translate from the foreign language into English. *Id.* Because the Petitioner did not submit a properly certified English language translation of the document, we cannot meaningfully determine whether the translated material is accurate and thus supports the Petitioner's claims. Further, the record contains a letter from an unidentified editor of [redacted] who stated that the Petitioner was featured in [redacted] "a newspaper of national circulation in [redacted] India." While the Petitioner claims that [redacted] is a publication of [redacted] the letter does not support her assertions. Moreover, a publication that is nationally distributed is not necessarily a major medium. The Petitioner did not submit, for instance, comparable circulation numbers for [redacted] and other major publications in India. In addition, the Petitioner did not include the title, date, and author of the material. For these reasons, the Petitioner did not demonstrate that the [redacted] article reflects published material about her in a professional or major trade publication or other major medium.

The Petitioner also references a [redacted] article and states that it "is a leading [redacted] language newspaper published by the [redacted] The article, however, is about [redacted] in [redacted] United Kingdom and the Petitioner is mentioned only once as being a performer. As such, the article is not indicative of published material about the Petitioner. *See Negro-Plumpe*, 2:07-CV-820-ECR-RJJ at *1. In addition, the Petitioner provided screenshots from www.[redacted] stating that [redacted] "campaign[s] for the needs of the UK [redacted] community of over 800,000 people." Although the screenshots claims that the UK [redacted] community has over 800,000 people, the Petitioner did not show the readership statistics for the publication. Accordingly, the Petitioner did not establish that [redacted] is a professional or major trade publication or other major medium.

Further, the Petitioner contends that the Petitioner was featured in other leading newspapers in India, the United Kingdom, and the United States. Specifically, the Petitioner claims that "being photographed in the pictures made her visible and noticeable." The record contains an article from [redacted] regarding a city budget debate in which the Petitioner is referenced as a student who provided a comment regarding the budget proposal. The article does not relate to the Petitioner's work as an Indian dancer. In addition, the Petitioner provided a copy of a magazine cover without a certified English translation. Although the Petitioner submitted a letter from [redacted] indicating that [redacted] featured the Petitioner on the cover page, she did not demonstrate that the magazine's cover comprised an article or other published material about her, including the title and author. Further, the Petitioner did not show that [redacted] is a professional or major trade publication or other major medium. Moreover, the record does not contain any articles from United States' publications as claimed by the Petitioner.

Finally, the record contains two articles from publications not identified by the Petitioner and which do not include the dates and authors. While the Petitioner is discussed as performing in dance programs, the Petitioner did not demonstrate that these articles were published in professional or major trade publications or other major media and complied with the regulation under 8 C.F.R. § 204.5(h)(3)(iii). For these reasons, the Petitioner did not establish that she meets 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 evidence of the Petitioner performing at dance festivals, such as the [redacted] in [redacted] India. Accordingly, the Director found that the Petitioner satisfied this criterion, and we agree with that determination.

> *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 contends that she meets this criterion based on her performance for the [redacted] at the 2007 [redacted] celebration. The record contains a letter from [redacted] general secretary for [redacted] who stated that the Petitioner performed at the event and "was able to impart to them as a very young [redacted] dancer the essence and historic significance of Classical dance." Further, the Petitioner provided two certificates evidencing her invitation and participation at the celebration.

In general, a leading role is evidenced from the role itself, and a critical role is one in which a petitioner was responsible for the success or standing of the organization or establishment. Although the Petitioner performed at the event, she did not demonstrate how her one-time performance constitutes a leading role for [redacted] overall. The Petitioner, for example, did not show how her role compared to the other positions within [redacted] to demonstrate that is leading. In addition, the Petitioner has not shown how her capacity in a single performance established that she was responsible for the successes or standing of [redacted] to reflect that her role was critical to the

organization. Although [redacted] claimed that the Petitioner's performance "made a cultural impact in the new generation of the Indian people," he did not explain how the Petitioner influenced [redacted] overall reputation or status.

On appeal, the Petitioner also discusses the functions of [redacted] and the importance of [redacted] work in the revival of Buddhism. The record contains screenshots from www.[redacted] regarding the history and purpose of [redacted] The regulation requires that the Petitioner has performed "for organizations or establishments that have a distinguished reputation." While the Petitioner emphasizes that the presentation of [redacted] bust at [redacted] shows that he is recognized on both sides of the Atlantic Ocean, the Petitioner did not establish that the organization [redacted] enjoys a distinguished reputation. Although the documentation indicates [redacted] involvement in exhibitions, seminars, lectures, festivals, and other events, it does not establish that the organization's status is at a level of distinction. Accordingly, the Petitioner did not demonstrate that she meets this criterion.

III. CONCLUSION

The Petitioner has not submitted the required initial evidence of either a one-time achievement or documents that meet 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 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. For the foregoing reasons, the Petitioner has not shown that she qualifies for classification as an individual of extraordinary ability.

ORDER: The appeal is dismissed.

Cite as *Matter of R-B-B-*, ID# 590293 (AAO Sept. 28, 2017)