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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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U.S. Citizenship
and Immigration
Services



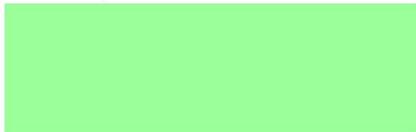
DATE: **DEC 15 2014** Office: TEXAS SERVICE CENTER

FILE:

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition on June 4, 2014. The petitioner, who is also the beneficiary, appealed the decision with the Administrative Appeals Office (AAO) on June 27, 2014. The appeal will be dismissed.

The petitioner seeks classification as an “alien of extraordinary ability” in the field of fine art, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), which makes visas available to aliens 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 determined that the petitioner had not established the sustained national or international acclaim necessary to qualify for this visa classification.

On appeal, the petitioner submits an appellate brief and a number of support documents, most of which the petitioner had previously submitted. For the reasons discussed below, we agree with the director that the petitioner has not established her eligibility for the exclusive classification sought. Specifically, the petitioner has not submitted qualifying evidence of a one-time achievement pursuant to 8 C.F.R. § 204.5(h)(3), or evidence that satisfies at least three of the ten regulatory criteria set forth in the regulations at 8 C.F.R. § 204.5(h)(3)(i)-(x). As such, the petitioner has not demonstrated that she is one of the small percentage who are at the very top in the field of endeavor, and that she has sustained national or international acclaim. *See* 8 C.F.R. § 204.5(h)(2), (3). Accordingly, we will dismiss the petitioner’s appeal.

I. LAW

Section 203(b) of the Act states, in pertinent part, that:

(1) Priority workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) 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.

U.S. Citizenship and Immigration Services (USCIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals

seeking immigrant visas as aliens of extraordinary ability. See H.R. 723 101st Cong., 2d Sess. 59 (1990); 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). 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 a multi-part analysis. First, a petitioner can demonstrate the alien’s sustained acclaim and the recognition of the alien’s achievements in the field through initial evidence of a one-time achievement (that is, a major, internationally recognized award). If the petitioner does not submit this evidence, then a petitioner must submit sufficient qualifying evidence that meets at least three of the ten categories of evidence listed at 8 C.F.R. § 204.5(h)(3)(i)-(x) to meet the basic eligibility requirements.

The submission of evidence relating to a one-time achievement or at least three criteria, however, does not, in and of itself, establish eligibility for this classification. See *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the evidence is first counted and then, if satisfying the required number of criteria, considered in the context of a final merits determination); see also *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011) (affirming USCIS’ proper application of *Kazarian*), *aff’d*, 683 F.3d. 1030 (9th Cir. 2012); *Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013) (finding that USCIS appropriately applied the two-step review); *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (holding that the “truth is to be determined not by the quantity of evidence alone but by its quality” and that USCIS examines “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”).

II. ANALYSIS

A. Prior O-1 Visa Petitions

While USCIS has approved at least one O-1 nonimmigrant visa petition filed on behalf of the petitioner, the prior approval does not preclude USCIS from denying an immigrant visa petition based on a different, if similarly phrased, standard. The regulatory requirements for an immigrant and non-immigrant alien of extraordinary ability *in the arts* are different. 8 C.F.R. § 214.2(o)(3)(ii) defines extraordinary ability in the arts (including the performing arts) as “distinction,” which is further defined as follows:

Distinction means a high level of achievement in the field of arts evidenced by a degree of skill and recognition substantially above that ordinarily encountered to the extent that a person described as prominent is renowned, leading, or well-known in the field of arts.

The regulation relating to the immigrant classification, 8 C.F.R. § 204.5(h)(2), however, defines extraordinary ability in any field as “a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor.” While the ten immigrant criteria set forth at 8 C.F.R. § 204.5(h)(3) appear in the nonimmigrant regulations,

8 C.F.R. § 214.2(o)(3)(iii), they refer only to aliens who seek extraordinary ability in the fields of science, education, business or athletics. Separate criteria for nonimmigrant aliens of extraordinary ability in the arts are set forth in the regulation at 8 C.F.R. § 214.2(o)(3)(iv). The distinction between these fields and the arts, which appears in 8 C.F.R. § 214(o), does not appear in 8 C.F.R. § 204.5(h). As such, the petitioner's approval for a non-immigrant visa under the lesser standard of "distinction" is not evidence of her eligibility for the similarly titled immigrant visa.

B. Evidentiary Criteria¹

Under the regulation at 8 C.F.R. § 204.5(h)(3), the petitioner, as initial evidence, may present evidence of a one-time achievement that is a major, internationally recognized award. In this case, the petitioner has not asserted or shown through her evidence that she is the recipient of a major, internationally recognized award at a level similar to that of the Nobel Prize. As such, as initial evidence, the petitioner must present at least three of the ten types of evidence under the regulations at 8 C.F.R. § 204.5(h)(3)(i)-(x) to meet the basic eligibility requirements.

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).

The director concluded that the petitioner did not meet this criterion. On appeal, the petitioner has not asserted that she meets this criterion or specifically challenged the director's conclusion. Accordingly, the petitioner has abandoned this issue, as she did not timely raise it on appeal. *Sepulveda v. United States Att'y Gen.*, 401 F.3d 1226, 1228 n.2 (11th Cir. 2005); *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885 at *1, 9 (E.D.N.Y. Sept. 30, 2011) (the United States District Court found the plaintiff's claims to be abandoned as he failed to raise them on appeal).

Moreover, although the evidence shows that the petitioner has been invited to participate in programs and fellowships, the petitioner has not shown that her selection for these programs and fellowships constitutes her receipt of either nationally or internationally recognized prizes or awards for excellence. Rather, these programs and fellowships, which might be competitive, constitute opportunities for the petitioner to improve her skills and further her career in fine art. The director correctly concluded that "[r]esidencies are generally described as opportunities that exist for creative people to provide time to reflect, research, present and/or produce away from their usual environments" and that "[f]ellowships are short-term opportunities to focus on professional developments." The petitioner has not shown that these programs and fellowships are recognized in the field on a national or international level as prizes or awards for excellence.

Accordingly, the petitioner has not submitted documentation of her receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. The petitioner has not met this criterion. *See* 8 C.F.R. § 204.5(h)(3)(i).

¹ We have reviewed all of the evidence the petitioner has submitted and will address those criteria the petitioner claims to meet or for which the petitioner has submitted relevant and probative evidence.

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).

The petitioner initially submitted foreign language articles with English translations supported by a single undated blanket certification. The certification affirms the accuracy of the "enclosed" translations but does not identify the translations or the petitioner. The director concluded that the petitioner did not meet this criterion. The evidence in the record supports this conclusion. Specifically, the director correctly concluded that the petitioner has not submitted English translations of foreign language documents that meet the regulatory requirements under 8 C.F.R. § 103.2(b)(3). The regulation provides, "[a]ny document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English." The record includes multiple translation certificates, most of them undated, certifying that the translator is fluent in English and Korean and certifying that the translations in the record "are true and accurate" or "accurate" translations. While the translator has individually certified the new translations on appeal, the petitioner has not submitted any certification stating that the English translations are "complete," as required under the plain language of the criterion.

On appeal, the petitioner asserts that the director erred because the section of his request for evidence (RFE) relating to this criterion discussed the content of the material without suggesting that the translations were deficient. While not within that section of the RFE, on pages 1 and 2 of the director's RFE, the director informed the petitioner that for all foreign language documents, the translator must certify that the English translations "are accurate and complete" and that he or she is competent to translate the documents. Regardless of whether USCIS has previously accepted similar certifications of translations as the petitioner asserts on appeal, the regulation at 8 C.F.R. § 103.2(b)(3) placed the petitioner on notice of the requirements for translations. *See Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988). An undated blanket certification that does not certify the completeness of the translations does not meet the regulatory requirement that the translator certify the translations as complete. Further, an undated blanket certification that does not identify the translations it is certifying or even name the petitioner is not probative evidence that the certification relates to all or any of the translations in this record of proceeding.

In the alternative, even if we consider the deficient English translations, they do not establish that the petitioner meets this criterion. First, the petitioner has not established the publishers of some of the materials in the record, including those entitled "[REDACTED]," "[REDACTED]" and "[REDACTED]." The foreign language documents are copies of separate newspaper clippings, with a small clipping of just the relevant article next to but separate from a clipping that

exhibition that does not discuss the artist is not, however, about the artist, even if a journalist authors the announcement. *See generally Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at 7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles about a show are not about the actor). “[REDACTED]” is not “about the alien . . . , relating to the alien’s work in the field.” The article mentions the petitioner’s name once and describes the petitioner’s exhibition in one sentence, without providing any other information about the petitioner. The article is thus about an exhibition where the petitioner’s work appears along with the work of three other artists. It is not about the petitioner, relating to her work, as required under the criterion. Similarly, the petitioner has not shown that either “[REDACTED]” or “[REDACTED]” (which appeared in [REDACTED]) is about the petitioner, relating to her work. The articles provide information on the petitioner’s work or exhibition in one to a few sentences. The articles, however, provide no other information about the petitioner. The petitioner has also not shown that “[REDACTED]” is about the petitioner, relating to her work. Rather, the article notes that the petitioner curated and selected artists for an exhibit in two sentences of an article that goes on to discuss the work of the selected artists. Further, the interview with [REDACTED] mentions the petitioner in only one answer that also discusses three other artists; the interview is not about the petitioner.

Finally, the material entitled “[REDACTED]” lacks information on the author of the article, as required under the plain language of the criterion. Promotional press releases are not probative evidence under this criterion.

Accordingly, the petitioner has not presented published material about her in professional or major trade publications or other major media, relating to her work in the field for which classification is sought. The petitioner has not met this criterion. *See* 8 C.F.R. § 204.5(h)(3)(iii).

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 director concluded that the petitioner met this criterion. The evidence in the record supports this conclusion. The evidence shows that the petitioner served as a juror for the [REDACTED] program and for the [REDACTED]. Accordingly, the petitioner has presented evidence of her 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. The petitioner has met 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 director concluded that the petitioner did not meet this criterion. On appeal, the petitioner has not asserted that she meets this criterion or specifically challenged the director’s conclusion.

Accordingly, the petitioner has abandoned this issue, as she did not timely raise it on appeal. *Sepulveda*, 401 F.3d at 1228; *Hristov*, 2011 WL 4711885 at *9.

Moreover, although the reference letters in the record praise the petitioner's skills and abilities as a fine artist, the solicited letters do not specifically identify the petitioner's contributions in the field or provide specific examples of how those contributions influenced the field as a whole. See *Visinscaia*, 4 F. Supp. 3d at 134 (upholding our decision to give minimal weight to vague, solicited letters from colleagues or associates that do not provide details on contributions of major significance in the field).

Furthermore, the reference letters, which discuss the display of the petitioner's work at various venues and the petitioner's selection for programs and fellowships, are insufficient to show the petitioner has met this criterion. The regulations contain separate criteria regarding evidence of display and prizes or awards. See 8 C.F.R. § 204.5(h)(3)(i), (vii). If the regulations are to be interpreted with any logic, it must be presumed that the regulation views contributions as a separate evidentiary requirement from display and prizes or awards. At issue under this criterion is whether the petitioner has made contributions of major significance in the field as a whole. As such, neither display of one's work nor selection for competitive programs and fellowships that do not constitute prizes or awards is sufficient evidence under the contributions criterion absent evidence of "major significance in the field." See *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009), *aff'd in part*, 596 F.3d at 1115. In other words, evidence of the petitioner displaying her work and her acceptance into programs and fellowships, without evidence of original contributions of major significance in the field, is insufficient to show that the petitioner meets this criterion.

Typically, in considering whether the petitioner has made a contribution of major significance, we look at the impact of the petitioner's work in the field. The petitioner has not submitted sufficient evidence showing that her work has had an impact consistent with contributions of major significance in the field, such that it fundamentally advanced or changed the field as a whole. Regardless of the field, the plain language of the phrase "contributions of major significance in the field" requires evidence of an impact beyond one's employer and clients or customers. See *Visinscaia*, 4 F. Supp. 3d at 134 (upholding a finding that a ballroom dancer had not met this criterion because she did not demonstrate her impact in the field as a whole).

Accordingly, the petitioner has not presented evidence of her original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field. The petitioner has not met this criterion. See 8 C.F.R. § 204.5(h)(3)(v).

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 director concluded that the petitioner met this criterion. The evidence in the record supports this conclusion. The evidence shows that the petitioner's work was exhibited at the [REDACTED], [REDACTED], the [REDACTED]

[REDACTED], the [REDACTED], and [REDACTED] at the [REDACTED]. Accordingly, the petitioner has presented evidence of the display of her work in the field at artistic exhibitions or showcases. The petitioner has met this criterion.

C. Summary

The petitioner has failed to satisfy the antecedent regulatory requirement of presenting three types of evidence in the field of endeavor, as required under the regulation at 8 C.F.R. § 204.5(h)(3).

III. CONCLUSION

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who have risen to the very top of the field of endeavor.

Had the petitioner submitted the requisite evidence under at least three evidentiary categories, in accordance with the *Kazarian* opinion, the next step would be a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) a “level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor,” and (2) “that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise.” 8 C.F.R. § 204.5(h)(2) and (3); *see also Kazarian*, 596 F.3d at 1119-20. As the petitioner has not done so, the proper conclusion is that the petitioner has failed to satisfy the antecedent regulatory requirement of presenting evidence that satisfied the initial evidence requirements set forth at 8 C.F.R. § 204.5(h)(3) and (4). *Kazarian*, 596 F.3d at 1122. Nevertheless, although we need not provide the type of final merits determination referenced in *Kazarian*, a review of the evidence in the aggregate supports a finding that the petitioner has not demonstrated the level of expertise required for the classification sought.³

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner’s burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.

³ We maintain *de novo* review of all questions of fact and law. *See Soltane v. United States Dep’t of Justice*, 381 F.3d 143, 145 (3d Cir. 2004). In any future proceeding, we maintain the jurisdiction to conduct a final merits determination at the office that made the last decision in this matter. 8 C.F.R. § 103.5(a)(1)(ii); *see also* INA §§ 103(a)(1), 204(b); DHS Delegation Number 0150.1 (effective March 1, 2003); 8 C.F.R. § 2.1 (2003); 8 C.F.R. § 103.1(f)(3)(iii) (2003); *Matter of Aurelio*, 19 I&N Dec. 458, 460 (BIA 1987) (holding that legacy INS, now USCIS, is the sole authority with the jurisdiction to decide visa petitions).