U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF N-M-A-

DATE: SEPT. 26, 2016

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, an endodontist, 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 petition, concluding that the Petitioner had satisfied only one of the regulatory criteria, of which she must meet at least three.

The matter is now before us on appeal. In her appeal, the Petitioner submits additional documentation and a brief stating that she meets two additional criteria.

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

I. LAW

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

> (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.

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 his or her achievements in the field through 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 sufficient 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).

Satisfaction of 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 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), *aff'd*, 683 F.3d. 1030 (9th Cir. 2012); *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 U.S. Citizenship and Immigration Services (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"). Accordingly, where a petitioner submits qualifying evidence under at least three criteria, we will determine whether the totality of 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.

II. PROCEDURAL HISTORY AND EVIDENCE OF RECORD

The Petitioner currently works as an endodontist and associate professor at [redacted] The Petitioner filed Form I-140, Immigrant Petition for Alien Worker, along with supporting documentation seeking to classify herself as an individual of extraordinary ability. The Director found that that the Petitioner met the scholarly articles criterion under 8 C.F.R. § 204.5(h)(3)(vi) but had not satisfied any of the other criteria at 8 C.F.R. § 204.5(h)(3). On appeal, the Petitioner maintains that she meets the awards criterion under 8 C.F.R. § 204.5(h)(3)(i), the membership criterion under 8 C.F.R. § 204.5(h)(3)(ii), the judging criterion under 8 C.F.R. § 204.5(h)(3)(iv), and the leading or critical role criterion under 8 C.F.R. § 204.5(h)(3)(viii). We have reviewed the entire record of proceedings, and it does not support a conclusion that the Petitioner meets the plain language requirements of at least three criteria.

III. ANALYSIS

As the Petitioner has not established that she has received a major, internationally recognized award, she must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x).

A. Evidentiary Criteria

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 contends that she is eligible for this criterion based on her receipt of the "Merit Badge" from the The Petitioner submits a letter from president of who provides background evidence regarding as well as the qualification requirements for the merit badge. Specifically, recipients receive the merit badge based on academics, speeches, concepts, discussions, and competency. Although letter offers historical information about the association and eligibility criteria for the badge, it does not demonstrate that the merit badge is a nationally or internationally recognized prize or award for excellence in the field of endeavor consistent with the regulation at 8 C.F.R. § 204.5(h)(3)(i). Accordingly, the Petitioner has not established that the "Merit Badge" meets this regulatory criterion.

Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields. 8 C.F.R. § 204.5(h)(3)(ii).

The Petitioner maintains on appeal that she meets this criterion based on her board membership with the including her election as president of the 12th On appeal, the Petitioner submits a letter from former president of who indicates that the association first started its activities in 1996 and publishes the In addition, states that due to the Petitioner's "vast and distinguished activities" and "her efforts and striking capabilities," she was elected to the board in 2007 and president of the 12th in 2008.

On appeal, the Petitioner indicates in her brief that does not require outstanding achievements, but that we should consider her "distinguished activities" and "striking capabilities" that led to her election to the board. letter does not mention the membership requirements for The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii) requires "[d]ocumentation of the alien's membership in associations in the field for which is classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields." Without evidence establishing that membership with requires outstanding achievements of its members, as judged by recognized national or international experts, the Petitioner has not demonstrated that she meets this regulatory criterion.

Furthermore, the Petitioner requests on appeal that we also consider her election as a fellow to the She submits a certificate and an unsigned, undated letter from secretary general for welcoming new fellows. The certificate was submitted with the appeal brief on May 10, 2016, but is dated May 19, 2016. The Petitioner

maintains that the fact that the certificate had not yet been awarded "is merely a formality as the ceremony could not be held until that date." The Petitioner, however, did not present evidence to support this statement. Statements made without supporting documentation are of limited probative value and are not sufficient to meet the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). Accordingly, we find the evidence insufficient to establish that she was granted membership as a fellow with

In addition to the lack of sufficient documentation regarding the fellowship, we note that eligibility must be established at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). Moreover, although on appeal the Petitioner provides the website address for and states that fellowship is bestowed to dentists who have made significant contributions, the Petitioner did not submit membership requirements or bylaws to support her positions. *Soffici*, 22 I&N Dec. at 165. Accordingly, the Petitioner did not demonstrate that membership as a fellow with meets this regulatory 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 Director determined that the Petitioner did not present evidence showing that she actually participated in the judging of the work of others in her field or an allied one. On appeal, the Petitioner submits documentation reflecting that she reviewed scholarly articles for publication in professional journals, such as the and the As such, the Petitioner established that she meets 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 documented her authorship of scholarly articles in professional or major trade publications, such as the and the Thus, the Director concluded that the Petitioner satisfied this criterion, and the record supports that finding.

> *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).

On appeal, the Petitioner contends that she meets this criterion based on her role as an board member and as president of the 12th She refers to the previously discussed letter from who indicates that the Petitioner coordinated the keynote speakers, exhibitions, and sponsors of the

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires the organizations or establishments to have a distinguished reputation. On appeal, the Petitioner states that publishes which is ranked by as the journal in the world for dentistry. The Petitioner submits a document entitled, "Sheet1," that lists 167 journals; however, it does not identify the source of the rankings or indicate that the information was derived from Furthermore, is ranked as number rather than In fact, is not ranked or mentioned on the list. The Petitioner's filings do not support her statements on appeal. *Soffici*, 22 I&N Dec. at 165. Nevertheless, the Petitioner has not shown that a journal ranked out of 167 rises to a level of eminence, nor did she otherwise establish has a distinguished reputation. For these reasons, the Petitioner has not met her burden of demonstrating her eligibility under this criterion.

B. Summary

As explained above, the record satisfies only two of the regulatory criteria. As a result, the Petitioner has not submitted the required initial evidence of either a one-time achievement or at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

IV. CONCLUSION

Had the Petitioner satisfied at least three evidentiary categories, the next step would be a final merits determination that considers all of the filings 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 individual "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), (3); *see also Kazarian*, 596 F.3d at 1119-20. Although we need not provide the type of final merits determination referenced in *Kazarian*, a review of the record in the aggregate supports a finding that the Petitioner has not established the level of expertise required for the classification sought.

The appeal will be dismissed for the above stated reasons. 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.

Cite as *Matter of N-M-A-*, ID# 11975 (AAO Sept. 26, 2016)