U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 5856469

Date: DEC. 27. 2019

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Extraordinary Ability)

The Petitioner, a chiropractor, seeks classification as an individual of extraordinary ability. *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 that the Petitioner met at least three of the ten initial evidentiary criteria for this classification.

On appeal, the Petitioner asserts that she meets at least three of the ten criteria and is eligible for the benefit sought.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 203(b)(1) of the Act makes visas available to 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 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).

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).

II. ANALYSIS

The Petitioner is a chiropractor who has practiced in Australia, Singapore, and the United States. She received her bachelor of applied science in chiropractic from the [redacted] Institute of Technology and her doctor of chiropractic from the [redacted] University of Health Sciences, [redacted] College of Chiropractic. The record reflects that she completed additional certifications in an alternative chiropractic technique called Network Spinal Analysis (NSA) which relies on a light touch method to improve release tension in the spine and correct misalignments.

A. Evidentiary Criteria

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 alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Director found that the Petitioner met two of the evidentiary criteria relating to published material and performing in leading or critical role. *See* 8 C.F.R. § 204.5(h)(3)(iii) and (viii). On appeal, the Petitioner asserts that she also meets the evidentiary criteria relating to original contributions of major significance in the field and commanding a high salary or other remuneration. After reviewing all of the evidence in the record, we find that the Petitioner has not met at least three of the initial evidentiary criteria.

> *Published material about the individual 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 Director determined that the Petitioner fulfilled this criterion, we disagree and will withdraw that finding. The record contains published articles about the Petitioner and her work in the field, but the submitted evidence is insufficient to establish that any of the submitted articles appeared in professional publications, major trade publications, or other major media.

Specifically, the Petitioner provided copies of articles published in various Singaporean publications, including *The Business Times*, *Expat Living*, *EX Magazine*, *The Executive*, *SHAPE Singapore*, *Extraordinary Lives Magazine*, and the online publication *Honeycombers*.

The article that appeared in *SHAPE* magazine did not mention the Petitioner's name and does not identify an author. Rather, the short article reads as a promotional piece for [redacted], the Petitioner's business in Singapore. It notes that [redacted] uses the NSA technique described above, briefly explains the technique, and provides the center's prices and website information. Articles that are not about a petitioner do not fulfill 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).[1] While the other submitted articles are about the Petitioner and her work, her initial submission did not include objective evidence to support her claim that any of these publications are professional publications, major trade publications, or major media.[2]

In response to a request for evidence, the Petitioner submitted additional evidence intended to establish that *The Business Times* and *Expat Living* publications are considered major media in Singapore.[3] With respect to *The Business Times*, which published an article about the Petitioner titled '[redacted]' in [redacted] 2005, the Petitioner provided a letter from its publisher, Singapore Press Holdings (SPH). According to its head librarian, SPH is Singapore's "biggest media company" and "*The Business Times* is a Major Media in Singapore" with daily circulation of over 31,000 copies in 2005. The Petitioner also submitted an excerpt from SPH's annual report confirming the 2005 circulation figure in a graph that provides the circulation figures for all 17 of the company's daily publications. Comparing the circulation of *The Business Times* to the others, we note that its circulation figures were lower than those of 14 other SPH publications. This evidence does not appear to support the publication's own claim that *The Business Times* qualifies as major media in Singapore. For example, two daily newspapers published by SPH – *The Straits Times* and *The Sunday Times* - had circulation figures of over 385,000, while eight others had figures well over 100,000 copies. The Petitioner also provided a screenshot from *The Business Times* website showing that the 2005 article remains accessible online, but did not provide evidence of the websites' circulation statistics.

The Petitioner also submitted partial copies of audit reports published by the Audit Bureau of Media Consumption of Singapore Ptd. Ltd. (ABC) for the years 2014 to 2017. While this evidence shows that *The Business Times* was among the daily publications monitored by ABC, the figures reported do not establish that its circulation is high in comparison to other daily newspapers in Singapore. Accordingly, the evidence does not support the Petitioner's claim that "[t]he Business Times is equivalent to the (New York Times?) as the Major Business Media of Singapore" or her claim that it is Singapore's sole financial and business news publication.

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[1] *See* USCIS Policy Memorandum PM 602-0005.1, *Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator's Field Manual (AFM) Chapter 22.2, AFM Update AD11-14* 7 (Dec. 22, 2010), https://www.uscis.gov/policymanual/HTML/PolicyManual.html (providing that the published material should be about the petitioner relating to his or her work in the field, not just about his or her employer or another organization with whom he or she is associated).

[2] *Id.* (stating that evidence of published material in professional or major trade publication or in other major media publications should establish that the circulation (on-line or in print) is high compared to other circulation statistics and show the intended audience of the publication).

[3] The Petitioner did not submit further evidence regarding the other publications that have printed articles about her and her work in support of a claim that they are professional publications, major trade publications or other major media.

The record reflects that *Expat Living,* which the Petitioner describes as a "monthly lifestyle magazine and distinguished resource" created for the expat community in Singapore, has published several articles about the Petitioner and her chiropractic practice. The Petitioner states it is "one of the few media in Singapore that are audited" by ABC, noting that it has "average net circulation" of over 16,000 copies. In addition, the Petitioner indicated that *Expat Living* has 75,000 monthly print readers and 300,000 readers online. The 16,471 copy circulation figure is supported by published data from ABC, but the Petitioner did not submit sufficient comparative information to establish that the magazine is considered major media in Singapore. The Petitioner submitted a very brief excerpt of an ABC report in which only Expat Living and one other publication appear and therefore it does not establish that magazine's relative standing among Singaporean print media. Further, the record does not include corroborating evidence supporting the figures the Petitioner submitted for monthly print and online readers.

Because the Petitioner did not establish that her evidence fulfills the evidentiary requirements, we withdraw the Director's determination that she met this criterion.

> *Evidence of the individual'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)

To satisfy this criterion, the Petitioner must establish that not only has she made original contributions but that they have been of major significance in the field. 8 C.F.R. § 204.5(h)(3)(v). Major significance in the field may be shown through evidence that her original contributions have been widely accepted and implemented in her field, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance in the field.[4]

The Petitioner asserts that she has "pioneered a dramatically different, and dramatically effective, method of providing chiropractic care," which offers "unique benefits" that "help people significantly advance their physical, intellectual and emotional state." The Petitioner's evidence includes "before and after" photographs of her patients, patient testimonial letters,[5] and a sampling of questionnaires completed by her patients.

While the published materials and other evidence in the record reflects that the Petitioner relies on the non-traditional [redacted] or "[redacted]" chiropractic method, the record does not support a finding that she pioneered or significantly advanced this technique. Rather, the evidence reflects that she completed three levels of training and certification in the method, and applied it to her own practice in Singapore. The submitted evidence indicates that the method has been a success for her individual patients, and suggests that it may not be widely used in Singapore. However, the Petitioner has not established how she has made an original contribution to the chiropractic field by using the existing [redacted] method in her practice.

Although the Petitioner emphasizes that "an impressive range of experts are unanimous in their professional opinion that [she] has indeed made major original contributions to the field of chiropractic

[4] *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, 8-9.

[5] While we do not discuss every letter here, we have reviewed and considered all of the letters submitted in analyzing whether the Petitioner met this criterion.

care," we note that she did not submit any letters from experts in the chiropractic field explaining her original contributions or their major significance. She submitted letters from professionals from various industries who have been her patients and who can credibly comment on the impact she had on their personal health; none of the individuals who provide letters purport to have expert knowledge of the Petitioner's field. For example, [redacted] an executive in an unrelated industry, asserts that after receiving the Petitioner's treatment, "the persistent tension in my neck and upper back . . . was all but gone within a few weeks," and notes other benefits of her treatment. She also states that the Petitioner "stands out in her capacity to consistently produce results not normally seen by her peers," but it is unclear what on knowledge or experience this opinion is based. [redacted] an entertainment industry executive, states that she was "struck by [the Petitioner's] extraordinary talent to effect powerful and positive change in my body and overall well being" and praises her "rare talent." [redacted] a marketing communications executive, states that she is the Petitioner's long-time patient and praises the Petitioner's "specialized approach" noting its "unique and phenomenal" benefits that she has not been able to receive from other health care professionals.

Letters from experts may add value if they specifically articulate how a petitioner's original contributions are of major significance and what impact they had on subsequent work, while letters that lack specifics and simply use hyperbolic language do not add value and are not considered to be probative evidence that may form the basis for meeting this criterion.[6] The letters submitted by the Petitioner commend her abilities as a chiropractor, establish the beneficial impact she has had on individual patents, and demonstrate that she has attracted some high profile clientele, but they are not from experts in her field and do not explain how she has made original contributions that have widely impacted the field. After review of the reference letters and other relevant evidence addressing the Petitioner's work as a chiropractor, the evidence in the record is insufficient to establish that she has made an original contribution in her field by offering the [redacted] treatment technique to her patients.

We have also considered evidence related to contributions the Petitioner has made through her charitable work. Specifically, the record reflects that she established [redacted] to bring her treatment method to young victims of sex trafficking in Cambodia. The Petitioner provided evidence that, as a result of this work, she was awarded a [redacted] Award at the [redacted] Summit in 2006. The evidence indicates that Petitioner's [redacted] chiropractic method has been beneficial to this vulnerable population. However, absent evidence that her work with victims of abuse has made a wider impact on the chiropractic field beyond her own charitable foundation, the Petitioner has not established that she has made an original contribution of major significance.

Therefore, for the foregoing reasons, the evidence in the record is insufficient to establish eligibility for this criterion.

> *Evidence that the individual 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)

[6] *See* USCIS Policy Memorandum PM-602-0005.1, *supra*, at 8-9.

The Director determined that the Petitioner satisfied this criterion. The record reflects that the Petitioner served in a leading role as the director and founder of [redacted] in Singapore, and sufficient evidence to establish that her chiropractic center has a distinguished reputation. Accordingly, we agree with the Director's finding that this criterion was met.

> *Evidence that the individual 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)

To establish eligibility under this criterion, the Petitioner must present evidence showing that she has earned a high salary or significantly high remuneration in comparison with those performing similar services in the field. *See Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994) (considering a professional golfer's earnings versus other PGA Tour golfers); *see also Skokos v. U.S. Dept. of Homeland Sec.*, 420 F. App'x 712, 713-14 (9th Cir. 2011) (finding salary information for those performing lesser duties is not a comparison to others in the field); *Grimson v. INS*, 934 F. Supp. 965, 968 (N.D. Ill. 1996) (considering NHL enforcer's salary versus other NHL enforcers); *Muni v. INS*, 891 F. Supp. 440, 444-45 (N. D. Ill. 1995) (comparing salary of NHL defensive player to salary of other NHL defensemen).

The Director acknowledged that the Petitioner submitted copies of invoices and evidence of payments from various clients to establish that she meets this criterion. However, the Director emphasized that she did not submit objective evidence, such as tax documents, demonstrating her actual pay or remuneration for any given period of time in support of her claim that she had "commanded a high salary or other significantly high remuneration."

On appeal, the Petitioner submits additional evidence of payments received from individual clients, including copies of invoices, bank statements. She also includes letters from clients, who confirm the amount they pay the Petitioner for each session and state that her rate per session is significantly higher than that of other chiropractors. However, the Petitioner has not supplemented the record with evidence of the actual salary or other remuneration that she has commanded for her services, such as tax documents corroborating her earnings in any given year.

Therefore, while the Petitioner has submitted comparative hourly and annual salary information for [redacted] based chiropractors from various reliable sources, she did not provide the information needed to compare this information to evidence that she has commanded a high salary in the past. Rather, the Petitioner has extrapolated her expected weekly, monthly, and annual remuneration in the United States, based on her price per session, anticipated number of clients, and the number of expected sessions per client. While this evidence indicates that she has the potential to earn a high salary, it does not meet the requirements for this criterion, which requires us to look at her past earnings. The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1).

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 acclaim and recognition required for the classification sought.

The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward the top. USCIS has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994). Here, the Petitioner has not shown that the significance of her work is indicative of the required sustained national or international acclaim or that it is consistent with a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate that the Petitioner has garnered national or international acclaim in the field, and she is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2).

For the reasons discussed above, the Petitioner has not demonstrated his eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.