U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33517000

Date: SEPT. 13, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, a professional dancer, seeks classification under the employment-based, first-preference (EB-1) immigrant visa category as a noncitizen with "extraordinary ability." *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). Successful petitioners for U.S. permanent residence in this category must demonstrate "sustained national or international acclaim" and document recognition of their achievements in their fields. *Id.*

The Director of the Nebraska Service Center denied the petition. The Director concluded that, contrary to the Act, the Petitioner did not demonstrate: her extraordinary ability in her field; her intent to continue working in the field in the United States; or her work's substantial prospective benefit to the country. On appeal, the Petitioner contends that the Director overlooked evidence and misunderstood law.

The Petitioner bears the burden of demonstrating eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Exercising de novo appellate review, *see Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015), we conclude that she established: her intent to continue work in her field in the United States; her work's substantial prospective benefit to the country; and satisfaction of the required number of initial evidentiary criteria regarding extraordinary ability. We will therefore withdraw the Director's decision and remand the matter for a final merits determination and entry of a new decision consistent with the following analysis.

I. LAW

To qualify as a noncitizen with extraordinary ability, a petitioner must demonstrate that they:

- Have "extraordinary ability in the sciences, arts, education, business, or athletics;"
- Seek to continue work in their field of expertise in the United States; and
- Through their work, would substantially benefit the country.

Section 203(b)(1)(A)(i)-(iii) of the Act. The term "extraordinary ability" means expertise commensurate with "one of that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2).

Evidence must demonstrate a noncitizen's receipt of either "a major, international recognized award" or satisfaction of at least three of ten lesser evidentiary criteria. 8 C.F.R. § 204.5(h)(3)(i-x).[1] If a petitioner meets either standard, USCIS must then make a final merits determination as to whether the record, as a whole, establishes sustained national or international acclaim and recognized achievements placing them among the small percentage at their field's very top. *Kazarian v. USCIS*, 596 F.3d 1115, 1119-20 (9th Cir. 2010); *see generally* 6 *USCIS Policy Manual* F.(2)(B), www.uscis.gov/policy-manual.

II. ANALYSIS

The record shows that the Petitioner, a Chinese native and citizen, entered the [redacted] at age 17. She ranked fifth among the 16 women accepted that year from more than 10,000 applicants. Four years later, in 2010, she graduated first in her class with a bachelor's degree in Chinese ethnic and folk dance performance. She then joined the [redacted] serving as the national ensemble's lead dancer. The troupe travels the world, introducing foreign citizens to Chinese songs and dances. Later, the Petitioner was among 13 people chosen from about 20,000 applicants to attend the [redacted] In 2021, while still dancing for the troupe, she obtained a master of fine arts degree in drama performance. Her thesis discussed the incorporation of dance movements into theatrical performances.

Now in the United States, the Petitioner initially stated her intent to continue her professional dance career in this country. She later submitted evidence that she and two other Chinese dance colleagues have established a U.S. company that would operate a dance studio, training customers in a variety of dance styles, including modern dance, Chinese dance, ballet, and hip-hop.

We will first consider whether the Petitioner demonstrated her intent to continue working in her field in the United States.

A. The Petitioner's Intent to Continue Work in the Area of Extraordinary Ability

Noncitizens with extraordinary ability must "seek[] to enter the United States to continue work in the area of extraordinary ability." Section 203(b)(1)(A)(ii) of the Act. This category requires neither job offers nor certifications from the U.S. Department of Labor. 8 C.F.R. § 204.5(h)(5). But a petition must include "clear evidence that the [noncitizen] is coming to the United States to continue work in the area of expertise." *Id.*

[1] If an evidentiary standard does not "readily apply" to a petitioner's occupation, they may submit "comparable evidence" to establish eligibility. 8 C.F.R. § 204.5(h)(4).

1. The Area of Extraordinary Ability

The Director and the Petitioner disagree on her "area of extraordinary ability." The Director defined the Petitioner's field of expertise as performance dancing, citing her listing of "dancer" as the job title in Part 6, "Basic Information About the Proposed Employment," of the Form I-140, Immigrant Petition for Alien Worker. The Director indicated that she would consider evidence only related to the Petitioner's dancing performances. The Director stated that "you may only apply one profession per Form I-140" and that "you may not combine [your professions] to meet 3 criteri[a] and [the] final merits analysis [for extraordinary ability]."

The Petitioner contends that her area of extraordinary ability extends beyond dancing performances to include the broader field of "dance." She asserts: "The law requires consideration of all relevant capacities within the same area of expertise, encompassing [her] roles as a dancer, choreographer, and dance instructor."

Neither the Act, regulations, nor USCIS policy specify how to determine a petitioner's area of expertise. The Director and the Petitioner cite U.S. district court decisions reaching different outcomes. The Director cites a decision affirming the immigration service's denial of a petition by an acclaimed Korean baseball player who sought to coach the sport in the United States. *See Lee v. Ziglar*, 237 F.Supp.2d 914, 915 (N.D. Ill. 2002). The court stated: "It is reasonable to interpret continuing to work in one's 'area of extraordinary ability' as working in the same profession in which one has extraordinary ability, not necessarily in any profession in that field." *Id.* at 918.

The Petitioner, however, cites a decision finding that, where a noncitizen listed his intended U.S. job title as "clergyman," USCIS too narrowly defined his field as "education." *Gulen v. Chertoff*, No. 07-2148, 2008 WL 2779001, *2 (E.D. Pa. July 16, 2008); *see also Buletini v. INS*, 860 F.Supp. 1222, 1229 (E.D. Mich. 1994) (finding that the Act "does not demand that the [noncitizen]'s extraordinary ability be narrowed to a specific topic of . . . study or that [a petitioner] show that [they are] seeking to enter the United States to continue work in the specific areas for which [they have] gained acclaim in the past").

We need not follow any of the three cited cases. *See Matter of Duarte-Gonzalez*, 28 I&N Dec. 688, 690 n.2 (BIA 2023) (stating that U.S. district court cases do not bind other tribunals). But we do not interpret the cases to conflict, and they persuade us that the Petitioner's appropriate area of expertise is the broader field of "dance." All three courts examined their records to determine the noncitizens' areas of extraordinary ability. *See Lee*, 237 F.Supp.2d at 917; *Gulen*, at *3; *Buletini*, 860 F.Supp. at 1230. In *Lee*, the petitioner did not submit any evidence of recognition he received as a coach. *Lee*, 237 F.Supp.2d at 917 ("[T]he record only shows Lee's achievements as a player, not a coach"). Thus, the record supported limiting his area of extraordinary ability to baseball playing and excluding baseball coaching. In contrast, the records in *Gulen* and *Buletini* showed the petitioners' respective acclaim in various areas beyond "education" and "nephrology," the respective fields applied by the immigration service. *Gulen*, at *3; *Buletini*, 860 F.Supp. at 1230.

Similar to *Gulen* and *Buletini*, an examination of this record shows that the Petitioner garnered acclaim not only as a dancer but also as a choreographer and dance instructor. She submitted evidence that she received an "Original Choreography Award" at an international dance competition and the

honorary title of "Ambassador of Chinese Dance Aesthetic Education" at a Chinese youth dance competition. These materials indicate that her area of extraordinary ability extends beyond that of dancing performances to also include choreography and dance instruction.

The record shows the Petitioner's receipt of acclaim as a dancer, choreographer, and dance instructor. We therefore find that her area of extraordinary ability is not limited to "dancer" but includes the broader field of "dance."[2] We will therefore withdraw the Director's contrary finding.

2. The Petitioner's Intended Work in the United States

Evidence of petitioners' intent to continue working in their areas of extraordinary ability in the United states may include: letters from prospective employers; evidence of prearranged commitments such as contracts; or statements detailing plans on how they intend to continue their work in the United States. 8 C.F.R. § 204.5(h)(5).

In the Petitioner's initial filing, she submitted a statement, indicating: "I am eager to establish myself as a professional dancer in the United States. To this end, I have actively reached out and engaged with several organizations dedicated to the promotion of dance education and performance." She suggested that she might work for a specific U.S. nonprofit organization that promotes Chinese dance education and creation. She stated: "I am enthusiastic about joining forces with this esteemed organization to further my dance career in the United States."

In response to the Director's request for additional evidence (RFE), however, the Petitioner, for the first time, indicated an intent to establish a U.S. dance studio, where she stated she would both dance and teach. She submitted a business plan and evidence of the formation of a U.S. corporation to operate the studio in January 2024, more than two months after the petition's filing in November 2023. She stated:

> [H]opefully, I will impart the dance expertise that I've learned to those who are keen on dance, pass on and develop Chinese dance culture, absorb and incorporate the essence of Western dance culture and blend the elements of dance in varied cultural contexts to develop more novel and international-based forms of dance.

The Director did not treat the Petitioner's initial statement as evidence. The record contains a certificate of translation regarding the statement. But the statement is in English. Because the record lacks a copy of the statement in a foreign language, the Director refused to consider the English statement.

The relevant regulation, however, requires an English language translation for "[a]ny document containing foreign language." 8 C.F.R. § 103.2(b)(3). The regulation does not conversely require a document containing foreign language for any English language translation. The Petitioner's

[2] Our finding is also consistent with USCIS policy regarding former athletes who seek to coach in the United States. *See generally* 6 *USCIS Policy Manual* F.(2)(A)(2) ("[I]n general, if a beneficiary has clearly achieved recent national or international acclaim as an athlete and has sustained that acclaim in the field of coaching or managing at a national level, officers can consider the totality of the evidence as establishing an overall pattern of sustained acclaim and extraordinary ability such that USCIS can conclude that coaching is within the beneficiary's area of expertise.")

statement did not contain foreign language. Therefore, the regulation does not apply to it. We will therefore withdraw the Director's contrary finding.

The Director's RFE did not notify the Petitioner of USCIS' disregard of her statement. On appeal, she said that she prepared the statement in English, intending to avoid the need for a translation. We will therefore consider the Petitioner's initial statement.

The Director also found that the Petitioner's initial statement insufficiently detailed how she would continue to work in her area of extraordinary ability. According to the Director: "Statements only expressing your prospective hopes of finding work or offering vague ambitions do not constitute detailed plans or the type of clear evidence that demonstrates eligibility under 8 C.F.R. [§] 204.5(h)(5)."

The Petitioner, however, need not provide a job offer. 8 C.F.R. § 204.5(h)(5). Thus, her statement that she intends to work as a professional dancer in the United States and that she has contacted prospective employers is sufficiently detailed. *See Gulen*, at *4 ("We find that, so long as regulations exhibit a clear intent not to require that a petitioner has an offer of employment, there is no basis for requiring a more precise statement of what activities he or she intends to engage in . . . than [to] identify the categories of work they intend to seek"). The Petitioner therefore demonstrated her intent to continue work in her field at the time of the petition's filing.

The Director also refused to consider the Petitioner's later evidence of her intent to establish a U.S. dance studio. Noting that the studio's proposed operating company was not formed until after the petition's filing, the Director stated that she could not consider the later evidence. *See* 8 C.F.R. § 103.2(b)(1) (requiring a petitioner to demonstrate eligibility "at the time of filing the benefit request").

But, by submitting her initial statement that she would seek a job as a professional dancer, the Petitioner established her intent to continue work in her field in the United States at the time of the petition's filing. Her later evidence indicates that, after the petition's filing, she decided to establish a U.S. dance studio, which is also consistent with her broad field of dance. We acknowledge that a petitioner may not make material changes to a petition that has already been filed. *Matter of Izummi*, 22 I&N Dec. 169, 175 (AAO 1998). But the Petitioner's later plan to establish a U.S. dance studio does not constitute a material change based on the facts of this specific case. Establishing a dance studio – like seeking a job as a dancer – falls within the broad field of "dance," her area of extraordinary ability. Thus, consistent with 8 C.F.R. § 103.2(b)(1), the Petitioner has demonstrated her intent to continue work in her field in the United States "at the time of the petition's filing and ... through adjudication."

The Petitioner demonstrated her intent to continue work in her field in the United States. We will therefore withdraw the Director's contrary finding.

B. Substantial Benefit to the United States

To qualify as a noncitizen of extraordinary ability, a noncitizen's work must "substantially benefit prospectively the United States." Section 203(b)(1)(A)(iii) of the Act. Neither the Act nor regulations

define the phrase "substantially benefit." But we have interpreted it broadly. *See generally* 6 *USCIS Policy Manual* F.(2)(A)(3). For example, we have found that a professional golfer would substantially benefit the United States in the future based on "the enormous popularity of golf in this country." *See Matter of Price,* 20 I&N Dec. 953, 956 (AAO 1994).

The Director concluded that the Petitioner did not demonstrate the substantial benefit of her proposed U.S. work. Defining her field as performance dance, the Director found that the Petitioner's establishment of a U.S. dance studio would render her dancing "incidental" to her work as a dance instructor at the studio. The Director stated: "[T]he evidence does not establish how your hobby or incidental employment as a professional dancer will substantially benefit prospectively the United States."

As previously discussed, however, the Petitioner's appropriate area of expertise is the broader field of "dance," including dancing, choreography, and dance instruction. Thus, both the Petitioner's dancing and dance instruction at the dance studio would fall under her field of expertise. Also, the record indicates that her teaching of Chinese dance to U.S. students would substantially benefit the United States by diversifying the country's dance culture. *See generally* 6 *USCIS Policy Manual* F.(2)(A)(3) (broadly interpreting "substantially benefit" in section 203(b)(1)(A)(iii) of the Act).

For the foregoing reasons, the Petitioner has demonstrated that her U.S. work would substantially benefit the country. We will therefore withdraw the Director's contrary finding.

C. Extraordinary Ability

The record does not establish – nor does the Petitioner claim – her receipt of a major internationally recognized award. She must therefore satisfy at least three of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i-x).

The record supports the Director's conclusion that the Petitioner met one of the evidentiary criteria: evidence of the display of her work in the field at artistic exhibitions or showcases. *See* 8 C.F.R. § 204.5(h)(3)(vii). On appeal, she contends that she also submitted evidence of:

- Her receipt of lesser nationally or internationally recognized awards for excellence in her field;
- Published material about her relating to her work in the field;
- Her participation as the judge of others' work in the field;
- Her original contributions of major significance to the field;
- Her authorship of scholarly articles in the field;
- Her performance in a leading or critical role for a distinguished organization; and
- Her commandment of high salary or remuneration.

See 8 C.F.R. § 204.5(h)(3)(i), (iii), (iv), (v), (vi), (viii), (ix). We must determine whether her evidence "objectively meets the parameters of the regulatory description." *See generally* 6 *USCIS Policy Manual* F.(2)(B).

1. Lesser Nationally or Internationally Recognized Awards

This criterion requires "[d]ocumentation of the [noncitizen]'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).

When adjudicating this requirement, USCIS first determines whether a petitioner – as opposed, for example, to their employer – received prizes or awards. *See generally* 6 *USCIS Policy Manual* F.(2)(B)(1). The Agency then determines whether an award was nationally or internationally recognized and received for excellence in the field of endeavor. *Id.* Relevant considerations include: criteria used to grant awards; their national or international significance; the number of awardees; and any limitations on competitors. *Id.*

The Petitioner submitted evidence that she received:

- A second prize for creation of a solo dance at a 2011 dance competition that the Chinese government sponsored;
- An "Original Choreography Award" at the grand finals of a 2022-23 world dance competition;
- The title "The Best Young Dancer of China" at a 2012 international Chinese arts festival; and
- The honorary title "Ambassador of Chinese Dance Aesthetic Education" at 2019 Chinese youth dance competition.

The Director found insufficient evidence that the Petitioner's awards received national or international recognition. We agree that the record lacks sufficient evidence of national or international recognition of her awards from the 2012 arts festival and the 2022-23 and 2019 dance competitions.

The record, however, indicates that the Petitioner's award at the 2011 government dance competition received national recognition. She submitted two online articles from a Chinese news agency describing the 2011 competition as "the national highest dance competition." One article states that the competition received 694 applications from across all of China's 31 provinces, autonomous regions, and municipalities under central government control. A Ministry of Arts official told the news agency that most of the country's best choreographers and dancers "emerged" at these triennial government dance competitions and that many award-winning competition programs later became "excellent works" performed on stage. Also, the art director/deputy head of the Petitioner's dance troupe called the dance competition "truly the highest-level professional dance contest and the most authoritative competition in China." [3]

The Director suggested that the Chinese government may have restricted participation in the 2011 dance competition. The Director stated: "[O]ne of the competitions appears to be Government sponsored, thereby limiting participants for entry by Government approval." The record, however,

[3] The Director did not consider the letter from the troupe's art director/deputy head or some other recommendation letters that the Petitioner submitted. The Director concluded that the letters lack the authors' addresses. *See* 8 C.F.R. § 204.5(g)(1) (requiring a letter from a petitioner's current or former employer to "include the name, address, and title of the writer"). That regulation, however, applies only to "[e]vidence relating to qualifying experience or training." 8 C.F.R. § 204.5(g)(1). We are considering the letter from the troupe's art director/deputy head as evidence of the Petitioner's receipt of nationally recognized awards. The regulation therefore does not apply.

lacks evidence that the competition's applicants required Chinese government approval. The Petitioner therefore sufficiently demonstrated that her 2011 award received national recognition.

Consistent with 8 C.F.R. § 204.5(h)(3)(i), the Petitioner submitted evidence of her receipt of a nationally recognized award for excellence in her field. *See* 6 *USCIS Policy Manual* F.(2)(B) ("[A]lthough some of the regulatory language relating to evidence occasionally uses plurals, it is entirely possible that the presentation of a single piece of evidence in a specific evidentiary category may be sufficient.") We will therefore withdraw the Director's contrary finding.

2. Judge of Others' Work

To meet this requirement, a petitioner must submit "[e]vidence of [their] 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). A petitioner must show not only their invitation to judge others' work, but also their actual participation in the judging. *See generally* 6 *USCIS Policy Manual* F.(2)(B)(1).

The Petitioner submitted a copy of an April 2023 letter from the sponsor of a world dance competition, inviting her to serve as a judge at the event. Copies of pages from the sponsor's website contain pictures and biographical information about her and the other four judges.

The Director acknowledged evidence of the Petitioner's invitation to serve as a judge. But the Director found that, contrary to the evidentiary requirement, her documentation did not demonstrate her actual "participation" as a judge.

On appeal, the Petitioner contends that the Director erred. She points to her response to the Director's request for additional evidence, which included copies of a certificate from the sponsor listing her and the other judges, and their review notes.

The certificate listing the judges does not establish the Petitioner's participation as a judge at the competition. The review notes, however, include the judges' comments after the competition's first day. The Petitioner's notes indicate her participation as a judge. Her notes state, in part: "In today's programmes, I have seen some movement mistakes caused by insufficient daily training or nervous emotions during the performance." Thus, the Petitioner has sufficiently demonstrated her participation as a judge of others' work in the same or an allied field.

The Petitioner has met the evidentiary requirement at 8 C.F.R. § 204.5(h)(3)(iv). We will therefore withdraw the Director's contrary finding.

D. Final Merits Determination

The Petitioner has satisfied at least three of ten evidentiary requirements at 8 C.F.R. § 204.5(h)(3)(i-x). We therefore need not consider her arguments that she meets other evidentiary criteria. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies need not make "purely advisory findings" on issues unnecessary to their ultimate decisions).

USCIS must now make a final merits determination on the Petitioner's filing. The Director did not make such a finding. Rather than make the determination in the first instance, we will remand the matter.

On remand, the Director must determine whether the Petitioner has sustained national or international acclaim and recognition of her achievements in her field, identifying her as one of that small percentage who has risen to the field's very top. *See generally* 6 *USCIS Policy Manual* F.(2)(B)(2). The Director should consider any potentially relevant evidence of record, even if it does not fit one of the evidentiary criteria or was not presented as comparable evidence. *Id.* The evidence's type and quality should determine the petition's approval or denial. *Id.*

III. CONCLUSION

The Petitioner demonstrated: her intent to continue work in her field in the United States; her work's substantial prospective benefit to the country; and satisfaction of at least three of ten evidentiary requirements regarding extraordinary ability. USCIS must now make a final merits determination on the petition.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.