U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF A-M-A-

DATE: NOV. 22, 2016

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a bodybuilding promoter, seeks classification as an individual of extraordinary ability in athletics. *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 not satisfied any of the initial evidentiary criteria, of which he must meet at least three.

The matter is now before us on appeal. In his appeal, the Petitioner submits a brief maintaining that he meets at least three 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. ANALYSIS

The Petitioner is the president of the and vice president of the As the Petitioner has not established that he has received a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). In denying the Petition, the Director found that that the Petitioner did not meet any of these criteria. On appeal, the Petitioner maintains that he meets the awards criterion under 8 C.F.R. § 204.5(h)(3)(i), the membership criterion under the regulation at 8 C.F.R. § 204.5(h)(3)(ii), the published material criterion under 8 C.F.R. § 204.5(h)(3)(iii), the judging criterion under criterion under 8 C.F.R. § 204.5(h)(3)(iv), the original contributions criterion under 8 C.F.R. § 204.5(h)(3)(v), the artistic display criterion under 8 C.F.R. § 204.5(h)(3)(vii), and the leading or critical role criterion under 8 C.F.R. § 204.5(h)(3)(viii). We have reviewed all of the evidence in the record of proceedings, and it does not support a finding that the Petitioner meets the plain language requirements of at least three criteria.

[1] The record contains variations of the name for this association, but we will refer to it as

A. Evidentiary Criteria[2]

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 "under his patronage, the team founded, developed, promoted/managed and coached by him won numerous international awards including world championships." The Petitioner provided screenshots showing finishes of individual and team competitors at various competitions under the auspices of the and the As this criterion relates to the Petitioner's own receipt of prizes or awards, the accomplishments of athletes that he promoted, coached, or managed do not fall under this criterion but will be addressed under the original contributions criterion at 8 C.F.R. § 204.5(h)(3)(v).[3]

The Petitioner did not demonstrate that he has received any prizes or awards as a bodybuilding promoter. While the record includes a Certificate of Achievement from for "placing among the top finalists" as the " the document does not identify the competition to which it relates. In addition, the record does not demonstrate that this certificate constitutes a nationally or internationally recognized award. For the reasons discussed, the Petitioner has not met his burden of demonstrating eligibility for this 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 he meets this criterion based on his membership with the and The record contains evidence confirming his membership and involvement with each association. The Petitioner, however, did not submit documentation, such as the associations' bylaws, showing that these memberships require outstanding achievements as judged by recognized national or international experts consistent with the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii). Without such documentation, evidence of his memberships is insufficient to meet this regulatory criterion.

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).

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[2] We will discuss those criteria the Petitioner has raised and for which the record contains relevant evidence.

[3] *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)* 12 (Dec. 22, 2010), http://www.uscis.gov/laws/policy-memoranda.

On appeal, the Petitioner indicates that he presented articles demonstrating his role as a promoter and organizer of In order to meet this criterion, Petitioner must submit published material about him and, as stated in the regulations, be printed in professional or major trade publications or other major media. Furthermore, the regulation requires the title, date, author, and necessary translation. The record contains uncertified English language translations of articles from and The uncertified translations do not comply with the regulation at 8 C.F.R. § 103.2(b)(3).[5] As the Petitioner did not submit properly certified translations, we cannot determine whether the evidence supports his claims. Furthermore, the Petitioner did not include the authors for the articles as required by this regulatory criterion.

Notwithstanding these deficiencies, it appears that two of the articles (and are about the Petitioner relating to his work. The uncertified translation of states that "[t]his Magazine was special about founder Regarding the uncertified translation reflects that "[t]his weekly Magazine is Famous in Iran about with version Print in Each week." The Petitioner did not provide evidence to support these statements or otherwise show that and are professional or major trade publications or other major media. Statements made without supporting documentation are of limited probative value and are not sufficient to meet the Petitioner's burden of proof. *See 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)).

The other articles in the record discuss the results of various bodybuilding competitions in which the Petitioner is either not mentioned or is simply credited with being the manager or president of the association. Articles that are not about the 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 about a show are not about the actor).

For the reasons discussed, the Petitioner did not demonstrate that he 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).

[4] The Petitioner's role will be addressed under the leading or critical role criterion under 8 C.F.R. § 204.5(h)(3)(viii).

[5] 8 C.F.R. § 103.2(b)(3) requires that any foreign language document must be submitted with a full English language translation that 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 contains evidence reflecting that the Petitioner served as a bodybuilding judge at various competitions, such as the in Hungary and the in Spain. Accordingly, the Petitioner established that he meets 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).

On appeal, the Petitioner refers to several recommendation letters as evidence of his eligibility for this criterion. As a preliminary matter, we note that review of those letters reflects distinctly similar language. For instance, each of the letters includes language similar to the following:

> [The Petitioner's] extraordinary ability unequivocally indicates that he is one of that small percentage of individuals who has risen to the very top of his field. His extraordinary skills and reputation had led to sustained National and international acclaim and his achievements are recognized and highly covered in this industry.[6]

In addition, the letters also include variations of this statement:

> In a career spanning over twenty years, [the Petitioner] has produced and directed the most popular Entertainment programs in Iranian television such as : TV Program & , 3D Animation , TV Serials, Reality show & Documentary Films. His invocative techniques are considered of major significance in the television industry in Iran.[7]

We also note for the record that the letters from (general manager for and board member for reflect this addition to the above-cited material: "[elaborate name of the major projects]" thereby suggesting that the letters were pre-populated and prepared on behalf of the author rather than based on his personal knowledge or opinion. *Cf. Surinder Singh v. Board of Immigration Appeals*, 438 F.3d 145, 148 (2d Cir. 2006) (upholding an immigration judge's adverse credibility determination in asylum proceedings based in part on the similarity of some of the affidavits); *Mei Chai Ye v. U.S. Dept. of Justice*, 489 F.3d 517, 519 (2d Cir. 2007) (concluding that an immigration judge may reasonably infer that when an asylum applicant submits strikingly similar affidavits, the applicant is the common source). As such, the letters possess diminished probative value. In evaluating the evidence, the truth is to be determined not by the quantity of evidence alone but by its quality. *See Matter of Chawathe*, 25 I&N Dec. at 376. In addition, USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, USCIS is ultimately responsible for making the final determination regarding a

[6] *See* letter.
[7] *See* letter.

foreign national's eligibility for the benefit sought. *Id.* Based on the extensive similarities between the above letters, USCIS may accord them less weight.

Apart from the questions raised by identical wording appearing in multiple letters, they do not show how the Petitioner's contributions have had a significant effect. For example, the letters do not describe the Petitioner's "invocative techniques" or how they are considered of major significance to bodybuilding. While the letters state that the Petitioner produced and directed "the most popular Entertainment programs in Iranian television," the record does not include sufficient documentation to corroborate those statements. The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may, as above, evaluate the content of those letters as to whether they support the foreign national's eligibility. USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *See id.* at 795; *see also Matter of V-K-*, 24 I&N Dec. 500, 502 n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). *See also Soffici*, 22 I&N Dec. at 165. Further, repeating the language of the statute or regulations does not satisfy a petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, No. 95 CIV. 10729, *1, *5 (S.D.N.Y. Apr. 18, 1997). Moreover, USCIS need not accept primarily conclusory statements. *1756, Inc. v. The U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.C. Dist. 1990). Accordingly, the content of the letters is insufficient to establish the Petitioner's eligibility for the immigration benefit sought.

As previously discussed under the awards criterion, the Petitioner indicated that he promoted bodybuilders who competed and received awards in bodybuilding events. Although the Petitioner provided a list of awards and competitions, he submitted screenshots that only corroborated a few of the award claims. For example, the Petitioner's list indicated that [redacted] finished in [redacted] place at the [redacted] in [redacted] Iran; however the record does not contain evidence to support this claim. Statements made without supporting documentation are of limited probative value and are not sufficient to meet the burden of proof in these proceedings. *Soffici*, 22 I&N Dec. at 165.

With respect to the awards that were corroborated, the Petitioner did not establish how he contributed to, or how his promotions resulted in, the bodybuilders receiving awards. Regardless, the Petitioner has not shown the significance of the named competitions or demonstrated the influence of his promoting work in the field beyond the individual athletes with whom he worked. *See Visinscaia*, 4 F. Supp. 3d at 134-35 (upholding a finding that a ballroom dancer had not met this criterion because she did not corroborate her impact in the field as a whole). Without supporting evidence, the Petitioner has not met his burden of showing that he has made original contributions of major significance in the field.

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 Petitioner claims on appeal that his directing and producing of the on and his promoting of the in competitions broadcasted on television channels throughout the world meet this regulatory criterion. Although the Petitioner submitted evidence relating to licensing and broadcasting rights for the Petitioner offered no evidence to support his claim regarding the showing of on television channels throughout the world. Unsupported statements 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. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. at 190).

In order to demonstrate eligibility for this criterion, the Petitioner must show that his work was on display, and the venues were artistic exhibitions or showcases.[8] Here, the Petitioner has not established that his work for these programs was of an artistic nature, or that the programs themselves constituted artistic venues. Accordingly, the Petitioner does not meet the plain language of this criterion.

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 he performed in a leading or critical role as founder and president of founder and general manager for founder and representative for the and vice president and representative for In general, a leading role should be apparent by its position in the organizational hierarchy and the role's matching duties. Based on the preponderance of the evidence, the Petitioner submitted sufficient evidence to demonstrate that he performed in a leading role for these organizations.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii), however, also requires the organizations or establishments to have a distinguished reputation. Although the Petitioner states on appeal that they have distinguished reputations, he does not provide an explanation or refer to documentation supporting that statement. The record of proceedings does not contain, for example, evidence reflecting their standings in the field, so as to reflect distinguished or eminent reputations consistent with the requirements of this regulatory criterion. For these reasons, the Petitioner has not met his burden of demonstrating his eligibility under this criterion.

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

B. Summary

As explained above, the record satisfies only one of the regulatory criteria. As a result, 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 listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

III. 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.

For the above stated reasons, the Petitioner has not met his 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).

ORDER: The appeal is dismissed.

Cite as *Matter of A-M-A-*, ID# 96335 (AAO Nov. 22, 2016)