



U.S. Citizenship
and Immigration
Services

Non-Precedent Decision of the
Administrative Appeals Office

MATTER OF S-U-A-F-

DATE: APR. 26, 2018

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a television producer, seeks classification as an individual of extraordinary ability in education. *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 Texas Service Center denied the Form I-140, Immigrant Petition for Alien Worker, concluding that the Petitioner had only shown that he met one of the ten initial evidentiary criteria, of which he must meet at least three.

On appeal, the Petitioner submits additional evidence and contends that he meets five criteria.

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

I. LAW

Section 203(b)(1)(A) 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 two options for satisfying this classification's initial evidence

requirements. First, a petitioner can demonstrate a one-time achievement (that is a major, internationally recognized award). Alternatively, he or she must provide documentation that meets at least three of the ten categories of evidence listed at 8 C.F.R. § 204.5(h)(3)(i)-(x) (including items such as awards, memberships, and published material in certain media).

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) (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). This two-step analysis is consistent with our holding that the “truth is to be determined not by the quantity of evidence alone but by its quality,” as well as the principle that we examine “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.” *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

II. ANALYSIS

The Petitioner is a television producer. As he has not established that he has received a major, internationally recognized award, he must satisfy at least three of the ten criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Director found that the Petitioner had only met one of these criteria, judging at 8 C.F.R. § 204.5(h)(3)(iv). On appeal, the Petitioner asserts that he meets four other criteria which we will discuss below. Upon review, we conclude that the evidence in the record does not support a finding that the Petitioner meets the plain language requirements of at least three criteria.

A. Evidentiary Criteria

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 states that he meets this criterion as a member and judge for the [REDACTED]. The record contains a letter from [REDACTED] who affirms that the Petitioner participated as a juror for the 2010 and 2011 [REDACTED]. At issue here is whether being a juror for this competition constitutes membership in an association that requires outstanding achievements of its members. [REDACTED] states that “[t]he [REDACTED] is a membership based organization comprised of leading media and entertainment figures from over 60 countries and 500 companies from all sectors of television.” He indicates that his task is “to select panels of unique and experienced television professionals from all over the world in order to judge the programs and

performers entered into the [REDACTED] competition.” Here, [REDACTED] indicates that the qualifications for jurors include being “unique and experienced television professionals,” but he does not stipulate that they must have outstanding achievements.

The record also contains a page from the [REDACTED] website which explains the judging process and how to become a juror for the competition, stating that jurors “should have at least five years professional experience in television, which may include producing, directing, writing, acquisitions, acting, casting, distribution and editing.” Accordingly, it appears that becoming a juror is more a function of experience rather than an applicant’s outstanding achievements. We find that the record does not demonstrate that outstanding achievements are required to be selected as a juror for the [REDACTED] competition. Therefore, the Petitioner does not meet this 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).

The record contains two articles from the [REDACTED] newspaper, which the Petitioner has demonstrated is a major newspaper in Mexico. The first article is from 1996 about [REDACTED] and [REDACTED] opening the first [REDACTED] in Mexico and contains several quotations from the Petitioner, who was the Producer of [REDACTED] Mexico. He indicates that [REDACTED] is offering a contest in which winners will receive a trip to [REDACTED] amusement parks. The second article is from 1997 about the premier of a [REDACTED] in which the Petitioner, as the International Promotions Director of [REDACTED] states that “the premiere will be done in [REDACTED] with the attendance of some of the actors in the cast.” However, neither of these articles is about the Petitioner or contains details about his work in the field.

The record also contains several versions of a press release from [REDACTED] announcing on its website that the Petitioner is a Client Solution Advisor for [REDACTED] and that he is among three new research and development team members to join [REDACTED]. It is unclear to what extent this press release has been distributed. The record does not contain evidence demonstrating that this press release is a major trade publication or other major media publication about the Petitioner. Therefore, the Petitioner does not meet this 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).

In his letter, [REDACTED] Director, acknowledges that the Petitioner participated as a Juror for the 2010 and 2011 [REDACTED]. We conclude therefore that the Petitioner meets the requirements 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).

A leading role should be apparent by its position in the overall organizational hierarchy and through the role's matching duties. A critical role should be apparent from the Petitioner's impact on the organization or the establishment's activities. The Petitioner's performance in this role should establish whether the role was critical for the organization or establishment as a whole.

On appeal, the Petitioner claims that he has performed a critical role for [REDACTED] and [REDACTED]. In a letter from [REDACTED] the CEO of [REDACTED] he states that the Petitioner is the Senior Vice President of Programming and Original Production and that his work "directly impacts virtually all aspects of our television content from concept to quality and everything in between" which is "vital to the success of our organization as its content drives sales and attracts viewers, consumers and much more." However, the [REDACTED] website indicates that the Petitioner is a Client Solution Advisor for [REDACTED] and that he "is responsible for all [REDACTED] commercial presales and sales efforts for key accounts in Mexico, Central America and Chile." While the press release discussed above indicated that the Petitioner was a Client Solution Advisor for [REDACTED] in 2014, the Univ website continues to state that this is the Petitioner's position. It is unclear what position [REDACTED] holds. In addition, [REDACTED] letter does not state what the Petitioner does specifically as a producer that would amount to a critical role in an organization with a distinguished reputation.

In a letter from [REDACTED] the General Coordinator for [REDACTED], she attests to the Petitioner's role as a reporter for the entertainment magazine [REDACTED] since 1999, "creating unique pieces, many of which were exclusives, given his extraordinary knowledge of the U.S. Hispanic and Latin American Television industry, not as a recognized journalist but also as an active Television Producer of more than 30 years of experience." She further states that the Petitioner's participation as an advisor on [REDACTED] editorial board "has been very productive" in helping the company "maintain audiences during a time that is very difficult for traditional media." This demonstrates that the Petitioner has made meaningful contributions to [REDACTED] but this does not establish that he performed a critical role within this organization.

The record also contains a letter from [REDACTED] Director and General Producer of [REDACTED] who indicates that her company contracted with [REDACTED] International, a company in which the Petitioner served as the director and general producer. She states that "[the Petitioner] performed a very important role within our television content, reviewing concepts and quality which is essential to the success of our productions." This demonstrates that [REDACTED] played an important role in helping [REDACTED] achieve success in its industry, but the record does not show the direct impact the Petitioner had in this role. Accordingly, the Petitioner has not established that he has performed a leading or critical role for these organizations.

Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales. 8 C.F.R. § 204.5(h)(3)(x)

The Petitioner asserts that his work as a producer has resulted in sales totaling millions of dollars. The record contains a service contract between the Federal Government of [REDACTED] and [REDACTED] in which the Petitioner is identified as its manager. This service contract states that [REDACTED] commits to provide 32 shows of for a total of \$1,280,000. However, the record does not demonstrate how this agreement with the government has resulted in commercial success. The regulation requires that commercial success be shown through “box office receipts” or “video sales” and the Petitioner has not shown how a contract between a company he manages and the government constitutes his commercial success. It is unclear whether the contract was fulfilled and whether the Petitioner’s company received the funding from the government.

In addition, the record contains a letter from [REDACTED] for the [REDACTED] who states that the Petitioner “has brought infrastructure investments for over 100 million dollar, which will start in the years to come.” The record does not provide specific details about these infrastructure investments or how they constitute commercial successes. Therefore, the Petitioner has not established that he meets this criterion.

III. CONCLUSION

The Petitioner is not eligible because he has not submitted the required initial evidence of either a qualifying 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). Thus, we do not need to fully address the totality of the materials in a final merits determination. *Kazarian*, 596 F.3d at 119-20. Nevertheless, we advise that we have reviewed the record in the aggregate, concluding that it does not support a finding that the Petitioner has the level of expertise required for the classification sought.

ORDER: The appeal is dismissed.

Cite as *Matter of S-U-A-F-*, ID# 1142639 (AAO Apr. 26, 2018)