U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF A-W-M-A-

DATE: AUG. 15, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a filmmaker and producer, seeks classification as an individual of extraordinary ability in the arts. *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 Form I-140, Immigrant Petition for Alien Worker, concluding that the Petitioner had satisfied only one of the ten initial evidentiary criteria, of which he must meet at least three.

On appeal, the Petitioner offers previously submitted documentation and a brief, contending that he meets at least three criteria of the ten 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,
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> (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
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> (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). If that petitioner does not submit this evidence, then he or she must provide 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). The regulation at 8 C.F.R. § 204.5(h)(4) allows a petitioner to submit comparable material if it is able to demonstrate that the standards at 8 C.F.R. § 204.5(h)(3)(i)-(x) do not readily apply to a beneficiary's occupation.

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 filmmaker who has produced movies in the United States. Because he has not indicated or 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 the Petitioner met only one of the initial evidentiary criteria, published material under 8 C.F.R. § 204.5(h)(3)(iii). The record contains articles and television coverage of the Petitioner in major media. Accordingly, we agree with the Director that the Petitioner satisfied the published material criterion.

On appeal, the Petitioner maintains that he meets two further criteria, including through the submission of comparable evidence, discussed below. We have reviewed all of the evidence in the record and conclude that it does not support a finding that the Petitioner satisfies the plain language requirements of at least three criteria.

A. Evidentiary Criteria

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).

The Petitioner argues that he provided reference letters establishing his eligibility for this criterion. Specifically, he claims that he "has made 'original' contributions in the film industry that are fresh, inventive, and creative as evidenced by his unique and groundbreaking work on internationally acclaimed film productions." In order to satisfy the regulation at 8 C.F.R. § 204.5(h)(3)(v), a petitioner must establish that not only has he made original contributions but that they have been of major significance in the field. For example, a petitioner may show that the contributions have been widely implemented throughout the field, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance.

In reviewing his recommendation letters, the authors praise the Petitioner for his work in films but do not demonstrate that his contributions have been of major significance in the field. For instance, [redacted] senior vice president of business affairs for [redacted] stated that the Petitioner's "problem solving and decision-making skills, sound judgment, and creative acumen shepherded to completion a critically acclaimed feature." Moreover, [redacted] adjunct professor at [redacted], opined that the Petitioner's "ability to conceive lyrical and powerful narratives with multi-dimensional characters is coupled with his remarkable aptitude as a world-class producer." Further, [redacted] founder of the [redacted] indicated that the Petitioner "has extensive experience with the financial aspects of film production, in addition to a strong business background, impeccable taste and sharp vision for the artistic success of a project."[1] While the letters commend the Petitioner for his skills, they do not explain what specific contributions he has made, or how they are "of major significance in the field."[2] Having a diverse skill set is not a contribution of major significance in-and-of itself. Rather, the record must be supported by evidence that the Petitioner has already used those unique skills to impact the field at a significant level.

The letters considered above primarily contain attestations of the Petitioner's status in the field without providing specific examples of contributions that rise to a level consistent with major significance. Letters that repeat the regulatory language but do not explain how an individual's contributions have already influenced the field are insufficient to establish original contributions of major significance in the field. *See Kazarian*, 580 F.3d at 1036, *aff'd in part* 596 F.3d at 1115.

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[1] Although we discuss a sampling of letters, we have reviewed and considered each one.

[2] *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* 8-9 (Dec. 22, 2010), https://www.uscis.gov/policymanual/HTML/PolicyManual.html; *see also 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).

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).

In addition, the Petitioner contends that he provided published material showing the significance of his movie, Specifically, the Petitioner asserts that "[t]he original nature of the film's social commentary is attested by numerous articles that specifically mention how the social impact of generated a fervent interest in the film." While the material indicates that premiered "in more than 400 cinemas in 42 states," the Petitioner did not establish how the movie significantly influenced the film industry. Here, the Petitioner did not demonstrate that the movie had a meaningful impact to the overall field beyond its release in movie theatres.

Finally, the Petitioner argues that he spoke at the stated that the " was delighted to have [the Petitioner] as a key participant at this conference where he spoke with great passion and authority on the issue." However, the Petitioner did not show how speaking at the regarding poverty and inequality is an original contribution of major significance to the field of films. The Petitioner, for instance, did not demonstrate that his speaking engagement significantly influenced the general entertainment or motion picture industries.

For these reasons, the Petitioner has not demonstrated that he meets this criterion.

> *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).

As indicated above, the Petitioner presented evidence showing that premiered at 400 movie theatres throughout the United States. Accordingly, the Petitioner established that he satisfied this criterion.

B. Comparable Evidence

Although the Director determined that the Petitioner satisfied the published material criterion, the Petitioner requests that his television interviews be considered as comparable evidence. In addition, the Petitioner indicates that his "critically acclaimed successes" reflect comparable evidence under the artistic display criterion. As discussed above, we found that the Petitioner fulfilled the published material and artistic display criteria without the submission of comparable evidence. Moreover, the regulation at 8 C.F.R. § 204.5(h)(4) allows for comparable evidence if the listed criteria do not readily apply to his occupation.[3] A petitioner should explain why he has not submitted evidence that would satisfy at least three of the criteria set forth in 8 C.F.R. § 204.5(h)(3) as well as why the evidence he has included is "comparable" to that required under 8 C.F.R. § 204.5(h)(3).[4]

[3] *See* USCIS Policy Memorandum PM-602-0005.1, *supra*, at 12.
[4] *Id.*

Here, the Petitioner has not shown why he cannot offer evidence that meets at least three of the criteria. The fact that the Petitioner did not provide documentation that fulfills at least three is not evidence that a movie producer could not do so. As discussed, the Petitioner claimed to meet three criteria. Moreover, the Petitioner did not show that producers cannot present evidence relating to the other criteria. As such, the Petitioner did not establish that he is eligible to meet additional criteria through the submission of comparable evidence.

C. O-1 Nonimmigrant Status

We note that the record reflects that the Petitioner received O-1 status, a classification reserved for nonimmigrants of extraordinary ability. Although USCIS has approved at least one O-1 nonimmigrant visa petition filed on behalf of the Petitioner, the prior approval does not preclude USCIS from denying an immigrant visa petition which is adjudicated based on a different standard – statute, regulations, and case law. Many Form I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *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). Furthermore, our authority over the USCIS service centers, the office adjudicating the nonimmigrant visa petition, is comparable to the relationship between a court of appeals and a district court. Even if a service center director has approved a nonimmigrant petition on behalf of an individual, we are not bound to follow that finding in the adjudication of another immigration petition. *Louisiana Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, at *2 (E.D. La. 2000).

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. at 954. Here, the Petitioner has not shown that the significance of his artistic accomplishments 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 he 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 foregoing reasons, the Petitioner has not shown that he qualifies for classification as an individual of extraordinary ability.

ORDER: The appeal is dismissed.

Cite as *Matter of A-W-M-A-*, ID# 1602798 (AAO Aug. 15, 2018)