



U.S. Citizenship
and Immigration
Services

Non-Precedent Decision of the
Administrative Appeals Office

MATTER OF M-L-

DATE: JUNE 5, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a contemporary artist, 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 Acting 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 initial evidentiary criteria, of which he must meet at least three. In addition, the Director determined that the Petitioner did not establish that he intends to continue to work in the United States in his area of expertise.

On appeal, the Petitioner presents additional documentation and a brief, arguing that he meets at least three criteria and satisfies all of the extraordinary ability requirements.

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

I. LAW

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

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 contemporary artist who has mainly displayed his artwork in China. Because he has not indicated or 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). In denying the petition, the Director found that the Petitioner met only one of the initial evidentiary criteria, artistic display under 8 C.F.R. § 204.5(h)(3)(vii).

On appeal, the Petitioner maintains that he meets five additional criteria, 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.

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).

The Petitioner argues that “[w]here the competition itself believes that the petitioner won the equivalent of silver, he should be held to have such award in the absence of an actual giving of such award.” The record contains evidence showing that he was one of six finalists for the 2011 [REDACTED]. In addition, he submitted letters from [REDACTED] jury president for the competition, and [REDACTED] co-curator for the award, who stated that [REDACTED] received the gold award and the other five finalists are considered “silver award winners.”

In order to meet this criterion, the Petitioner must demonstrate, in part, that he was the recipient of prizes or awards.¹ Here, the record does not corroborate either the Petitioner's claims or the statements in his letters. Specifically, the Petitioner provided documentary evidence reflecting that the [REDACTED] grants only one award, including statements such as "[t]he award aims to grant to one artist annual[ly]," and "[o]ne awarding artist will be selected annually for his or her constant artistic creation." Moreover, [REDACTED] chief project curator for the award, stated that "[t]he award aims to grant to one artist annual, who is consistent in his/her artistic practice." Thus, the evidence indicates that only one award is granted, and the Petitioner did not establish that the competition distributes "silver awards," or that the remaining finalists receive them. Therefore, the Petitioner did not show that he received a prize or award consistent with the regulation at 8 C.F.R. § 204.5(h)(3)(i).

In addition, the Petitioner did not demonstrate that the [REDACTED] is a nationally or internationally recognized prize or award for excellence in the field. According to [REDACTED] letter, the [REDACTED] was created in 2010 to be the first award set-up by a non-profit museum in China. Although [REDACTED] claimed that the competition was covered by the Chinese press in several newspapers and broadcasted by one television station, the Petitioner provided only one screenshot from chinadaily.com reporting about the competition. Accordingly, the Petitioner has not shown national or international recognition as an award for excellence in the field.²

Further, the Petitioner also contends that because "[t]he evidence is heavily present in the file that the standards of award of the [REDACTED] competition are not normal, and so do not readily apply to the petitioner's occupation," the award should be considered as comparable evidence. The regulation at 8 C.F.R. § 204.5(h)(4) allows for the submission of comparable evidence if the listed criteria do not readily apply to his occupation.³ Here, the Petitioner argues that the [REDACTED] does not apply to his occupation. On the contrary, the record contains sufficient evidence reflecting that the award is applicable to Chinese artists, such as the Petitioner. The fact that the Petitioner did not garner the [REDACTED] is not evidence that his finalist position should be considered in the alternative as comparable evidence. Accordingly, the Petitioner did not establish that he meets this criterion, nor has he met the comparable evidence requirements.

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 6* (Dec. 22, 2010), <http://www.uscis.gov/laws/policy-memoranda>.

² *Id.* at 6.

³ *Id.* at 12.

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 articles reflecting material about the Petitioner relating to his work in publications such as [REDACTED] and [REDACTED]. However, the record does not establish that these publications qualify as that they are professional or major trade publications or other major media. The Petitioner provided documentation from the publications, such as inside covers and letters, advertising their standing and public reach. For example, a letter from [REDACTED] publisher for [REDACTED], claimed that [REDACTED] is the number one [REDACTED] contemporary art magazine, a bi-monthly Chinese-English publication with global distribution.” Moreover, a letter from [REDACTED], chief editor for [REDACTED] asserted that [REDACTED] is a well-known magazine in the field of contemporary art,” and “[o]ur publication is national, and with one of the broadest distribution networks for art journals, it can be acquired in over 200 art bookstores in China.” Further, [REDACTED] website indicates that “[n]early 5 million people have access to [REDACTED] on a daily basis,” and [REDACTED] boasts that it “has raised its profile internationally to become one of the most respected journals devoted to contemporary Chinese art.” Although the Director informed the Petitioner that documentation from the publications was insufficient to establish that they are qualifying publications, the Petitioner does not offer any independent, supporting evidence on appeal to demonstrate their circulations or reputations.⁴

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).

In order to satisfy the regulation at 8 C.F.R. § 204.5(h)(3)(v), a petitioner must establish not only that he has made original contributions but that they have been of major significance in the field. For instance, a petitioner may show that his 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 his overall field. The Petitioner argues that his artwork “has had solo or group exhibitions . . . around the globe.” The showcasing or exhibiting of his work, however, will be considered and discussed under the artistic display criterion under 8 C.F.R. § 204.5(h)(3)(vii). Further, the Petitioner did not establish that the field views the display of his work at museums and galleries as majorly significant.

In addition, the Petitioner contends that [REDACTED] director of [REDACTED] [REDACTED] artist and filmmaker; and [REDACTED] director of [REDACTED] wrote about his [REDACTED] where he introduced artwork to villagers in his rural hometown, in

⁴ See *Braga v. Poulos*, No. CV 06 5105 SJO (C. D. CA July 6, 2007) *aff'd* 2009 WL 604888 (9th Cir. 2009) (concluding that self-serving assertions on the cover of a magazine as to the magazine's status is not reliant evidence of major media).

their publications. Moreover, the record contains letters further discussing the Petitioner's work on the [REDACTED]. Although [REDACTED] claimed that the Petitioner "is an influence to others," she did not explain how he has influenced others or how his project is considered to be of major significance to the field. Further, while [REDACTED] stated that the project is "one of the most moving and interesting works of art that [she has] witnessed in decades," she did not establish that the [REDACTED] or any his other artwork or projects, is considered to be of major significance in the field. [REDACTED] did not, for example, describe the significant impact to the overall field beyond her personal opinion of his artwork. Similarly, [REDACTED] indicated the "invaluable addition to the development of the collection in the museum," without showing its influence on the field.⁵ For these reasons, the Petitioner did not demonstrate that his [REDACTED] rises to a level consistent with major significance, and that he meets this criterion.

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media. 8 C.F.R. § 204.5(h)(3)(vi).

The Petitioner claims that his written material qualifies as scholarly articles and provides a screenshot from [REDACTED] defining scholarly or peer-reviewed journal articles as "written by scholars or professionals who are experts in the fields." Further, the record contains two articles, published in [REDACTED] and [REDACTED], and a book, [REDACTED] describing and recounting the history of his [REDACTED].

A scholarly article should be written for "learned" persons in the field. "Learned" is defined as having or demonstrating profound knowledge or scholarship. Learned persons include all persons having profound knowledge of a field.⁶ Here, the Petitioner authored material sharing his personal experiences rather than "scholarly" articles. Moreover, as discussed under the published material criterion, the Petitioner did not demonstrate that [REDACTED] and [REDACTED] as well as his book, qualify as professional or major trade publications or other major media. Accordingly, the Petitioner did not establish that he satisfies 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).

The Director found that the Petitioner met this criterion. As the Petitioner provided evidence showing that his work has been displayed at museums, such as the [REDACTED] we concur with the Director's finding.⁷

⁵ See USCIS Policy Memorandum PM-602-0005.1, *supra*, at 8-9; 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).

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

⁷ See USCIS Policy Memorandum PM-602-0005.1, *supra*, at 9-10.

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).

The Petitioner contends that he performed in a leading or critical role for the [REDACTED]. Specifically, he argues that [REDACTED] foreword to his book “clearly points out the leading or critical role that [he] has performed for the museum in helping it determine its role for the future.” In addition, the Petitioner claims that the museum’s promotion of his [REDACTED] purchase of his artwork, and two exhibitions show his role with it.

If a leading role, then evidence must establish that a petitioner is or was a leader. A title, with appropriate matching duties, can help to establish if a role is or was, in fact, leading.⁸ If a critical role, the evidence must establish that a petitioner has contributed in a way that is of significant importance to the outcome of the organization or establishment’s activities. It is not the title of a petitioner’s role, but rather the performance in the role that determines whether the role is or was critical.⁹

Here, the Petitioner did not establish that he performed in a leading role for the [REDACTED]. The record does not show that he ever held a leadership position with the museum or that the museum ever employed him in any capacity; instead it collaborated with him in assisting with the [REDACTED] and exhibited his work on two occasions. Accordingly, the Petitioner did not demonstrate that his collaborations amounted to a leading role with the museum.

As it relates to a critical role, the Petitioner did not show that he contributed to the success or standing of the [REDACTED]. While [REDACTED] opines in his foreword that other museums should pursue the approach the Petitioner took with the [REDACTED] he does not explain how it affected the [REDACTED]. Moreover, the Petitioner did not show, for example, that his exhibitions brought in higher attendance or furthered the museum’s reputation. For these reasons, the Petitioner did not show that he performed in a critical role for the [REDACTED] and that he satisfies this criterion.

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 1119-20.¹⁰ 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 level of expertise required for the classification sought. For the

⁸ See USCIS Policy Memorandum PM-602-0005.1, *supra*, at 10.

⁹ *Id.*

¹⁰ In addition, as the Petitioner has not established his extraordinary ability under section 203(b)(1)(A)(i) of the Act, we do not need to determine whether he intends to continue to work in the United States in his area of expertise. See section 203(b)(1)(A)(ii) of the Act and 8 C.F.R. § 204.5(h)(5).

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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 M-L-*, ID# 1274907 (AAO June 5, 2018)