U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF S-A-X-

DATE: SEPT. 24, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a guitarist, 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 not satisfied any of the ten 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 offers previously submitted documentation and a brief, contending that he meets at least three of the ten criteria and will work as a guitarist once admitted to the United States.

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). 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 guitarist who has performed with the musical group, 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 did not meet any of the initial evidentiary criteria.

On appeal, the Petitioner maintains that he fulfills four criteria. 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 contends that his receipt of the ' at in 2006 and 2008 meets this criterion. In order to satisfy this criterion, a petitioner must demonstrate

that his prizes or awards are nationally or internationally recognized for excellence in the field.[1] The record reflects that the Petitioner provided screenshots from his own YouTube channel of him winning the awards at the ceremony, and a "Letter of Acknowledgement" from an unidentified individual of the human resource department of [redacted] who "expressed [their] heartfelt appreciation" for the Petitioner receiving the awards. Although the documentation relates to the Petitioner receiving the awards, the record does not establish that they received national or international recognition for excellence in the field. Accordingly, the Petitioner did not demonstrate that he fulfills 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 Petitioner argues that he "submitted a lot of media coverage about [him] with [his] original filing of the I-140 as well as with [his] Response to the [request for evidence]." The record, however, does not reflect that he provided published material about him in professional or major trade publications or other major media, which included the title, date, and author.[2] With the exception of two screenshots and an unidentified publication, the record reflects that the Petitioner submitted approximately 16 screenshots from various websites reflecting coverage of the band, [redacted] rather about him. Although the Petitioner is mentioned as a member of the band, the screenshots discuss and are about the band. For instance, the Petitioner presented a screenshot from epaper.tribune.com.pk entitled, "Keeping the game strong, [redacted] set for another US tour after treating [redacted] with live music, workshops." While the screenshot shares quotes from the band members, it is about [redacted] performing in the United States. Articles that are not about a 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 regarding a show are not about the actor).

In addition, the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires the Petitioner to "include the title, date, and author of the material."[3] The Petitioner contends that "[t]he coverage has names of authors [redacted] and [redacted] just to name two and in places it only says 'our correspondent' as is the general practice in Pakistan." As it relates to screenshots listing the author as "our correspondent," the Petitioner did not identify the correspondent who authored the material. Furthermore, the Petitioner did not support his assertion regarding the general practice in Pakistan with corroborating evidence. Moreover, the Petitioner did present seven screenshots with named

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[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), https://www.uscis.gov/policymanual/HTML/PolicyManual.html.
[2] *See also* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 7.
[3] *Id.*

authors rather than "our correspondent," which appears to dispute his assertion that authors are not named in Pakistan.

Further, although the Petitioner argues that "[e]very piece of the media coverage has a date on top," the record reflects that only six screenshots include the date of the material. We note that at the initial filing of the petition, the Petitioner submitted screenshots with "12/2/2016" listed on top of the documents. Similarly, in response to the request for evidence, the Petitioner provided several screenshots with "12/14/2017" posted listed on top. However, these dates appear to be the dates the screenshots were printed rather than the authored dates of the articles. In addition, even if "12/14/2017" was the date the screenshots were authored, they occurred after the filing of the petition.[4]

The Petitioner maintains that "[t]he newspapers and television channels [he] mentioned have circulation and audience going into hundreds of thousands and millions in case of TV viewers." First, the record does not reflect that he provided any published material from television channels, nor did not he present evidence supporting his assertion that the television channels have millions of viewers. Second, the Petitioner submitted a screenshot from the Center for Strategic & International Studies indicating that "*Dawn News* is second in the English category and sixth in the national with a circulation of 109,000." The record, however, does not include evidence of published material from *Dawn News*. Instead, the record indicates that the Petitioner presented five screenshots posted on dawn.com. Although the Petitioner offered an unidentified document with viewing statistics for that website, he did not demonstrate that the information shows that it is a major medium.

As discussed above, the Petitioner submitted three screenshots that reflect published material about him. Specifically, the Petitioner provided screenshots from christiansinpakistan.com, epaper.tribune.com/pk, and an unidentified publication. However, the material does not contain the date and/or author.[5] Furthermore, the Petitioner did not establish that the two screenshots and the unidentified publication were published in professional or major trade publications or other major media. For these reasons, the Petitioner did not demonstrate that he meets 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).

[4] The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1).

[5] We note that the record reflects only three screenshots (tribune.com ' ; tribune.com.pk and tribune.com.pk) that contain both the date and author of the material; however, the Petitioner did not demonstrate that the screenshots reflect published material about him, nor did he show the websites are major media.

The record contains evidence showing that the Petitioner participated as a judge for a talent show of aspiring young singers in Pakistan. Accordingly, the Petitioner demonstrated 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).

Although not claimed by the Petitioner on appeal, the record contains evidence that the Petitioner performed before audiences at concerts and other music events. As such, the Petitioner established that he fulfills this criterion.

> *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 contends that he submitted evidence of his "sustained presence on YouTube and Coke Studio." The regulation at 8 C.F.R. § 204.5(h)(3)(x) requires evidence of the Petitioner's commercial success, "as shown by box office receipts or record, cassette, compact disk or video sales." Moreover, the evidence must show that the volume of sales and box office receipts reflect a petitioner's commercial successes relative to others involved in similar pursuits in the performing arts.[6] Although the Petitioner provided screenshots from YouTube and Coke Studio, he did not offer evidence of his commercial successes through receipts or sales. Furthermore, the Petitioner did not demonstrate that his presence on YouTube or Coke Studio resulted in a volume of sales reflecting commercial successes compared to other musicians or guitarists. For these reasons, the Petitioner did not show 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.[7] 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. 953, 954 (Assoc. Comm'r. 1994). Here, the Petitioner has not shown that the significance of his artistic accomplishments is indicative

[6] *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 11-12.

[7] 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).

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 S-A-X-*, ID# 1567873 (AAO Sept. 24, 2018)