U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF C-B-

DATE: APR. 9, 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a performing artist and actor, 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 although the Petitioner satisfied three of the initial evidentiary criteria, as required, he did not show sustained national or international acclaim and demonstrate that he is among the small percentage at the very top of the field of endeavor.

On appeal, the Petitioner submits further documentation and a brief, arguing that he meets an additional criterion and has sustained the required acclaim and has risen to the very top of his field.

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).

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 an actor who has mainly performed in Italy, the United Kingdom, and the United States. 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).

The Director found that the Petitioner met the following three criteria: published material under § 204.5(h)(3)(iii), judging under 8 C.F.R. § 204.5(h)(3)(iv), and artistic display under 8 C.F.R. § 204.5(h)(3)(vii). The record reflects that the Petitioner served as a judge at an independent film festival and has performed in theaters and at festivals. Accordingly, we agree with the Director that the Petitioner fulfilled the judging and artistic display criteria. However, for the reasons discussed later in this decision, we do not concur with the Director's determination that the Petitioner satisfied the published material criterion.

On appeal, the Petitioner maintains that he meets one additional criterion, discussed below. We have reviewed all of the evidence in the record and conclude that it does not support a finding that the Beneficiary satisfies the requirements of at least three criteria.

A. Evidentiary 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 claims to meet this criterion based on being a cast member in a production that won an [redacted] and a [redacted] Specifically, he submitted documentation reflecting that the theatrical production, [redacted] received an [redacted] for "[redacted]" and a [redacted] for "[redacted]." In addition, he references a 2003 non-precedent decision and argues that "team" awards satisfy this criterion. However, the referenced 2003 decision was not published as a precedent and therefore do not bind USCIS officers in future adjudications. 8 C.F.R. § 103.3(c). Non-precedent decisions apply existing law and policy to the specific facts of the individual case, and may be distinguished based on the evidence in the record of proceedings, the issues considered, and applicable law and policy. Here, the Petitioner did not show that the specific facts and circumstances of those cases are strikingly similar to those of the present case.

In order to fulfill this criterion, the Petitioner must demonstrate his *receipt* of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.[1] Here, the Petitioner did not receive an [redacted] or [redacted] rather, the production garnered the awards. The description of this type of evidence in the regulation provides that the focus should be on "the alien's" receipt of the awards or prizes, as opposed to his or her employer's receipt of the awards or prizes.[2] Moreover, the Petitioner did not show how the awards for "[redacted]" and "[redacted]" are in his field of endeavor, performing and acting.

In addition, the evidence offered by the Petitioner regarding both the [redacted] and the [redacted] reflect that they also bestow specific, individual awards. For instance, they grant awards to best actors and actresses in supporting and leading roles in multiple categories. Most relevant here, the Petitioner did not receive an [redacted] or [redacted] for his cast or acting role in [redacted] We note that while some award categories are for the production, individuals are also specifically credited. For example, the 2011 [redacted] named the winner of "Best Costume Design" to [redacted] designed by [redacted] Here, [redacted] and [redacted] received the award because both were named recipients as opposed to the Petitioner who was not recognized or mentioned in the "[redacted]" or "[redacted]" categories.

For the reasons discussed above, the Petitioner did not establish that he meets this criterion.

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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] *Id.*

> *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).

Although the Director determined that the Petitioner satisfied this criterion, we disagree. Specifically, the Petitioner did not demonstrate published material about him in professional or major trade publications or other major media, which include the title, date, and author.[3] The record reflects that he submitted two articles about him published in *Gazzetta d'Alba*; however, neither article contains the required author of the material. In fact, in his appeal brief, he indicates the authors as "N/A" (not applicable).

Nevertheless, the Petitioner offered screenshots from *Similar Web* regarding rankings and "traffic overview" for gazzettadalba.it. For example, *Similar Web* reflects that the website has a global ranking of 448,451, a country ranking of 12,992, and total visits of "155.04K." However, the Petitioner did not demonstrate that the articles were posted on gazzettadalba.it. Further, although he provides evidence relating to general Internet traffic estimators and methodology, the Petitioner did not show the significance of gazzettadalba.it's rankings and viewing statistics or explain how such information reflects status as a major medium.[4] As it relates to *Gazzetta d'Alba*, the Petitioner provided screenshots from *Wikipedia*, which claimed that *Gazzetta d'Alba* is a local, weekly publication with a circulation of 15,500. We note that *Wikipedia* is an online, open source, collaborative encyclopedia that explicitly states it cannot guarantee the validity of its content. *See General Disclaimer, Wikipedia* (April 9, 2019), https://en.wikipedia.org/wiki/Wikipedia:General_disclaimer; *Badasa v. Mukasey*, 540 F.3d 909 (8th Cir. 2008). Further, the Petitioner did not establish that such circulation figures represent major medium status consistent with this regulatory criterion.[5]

Moreover, the Petitioner submitted an article about him published in *Il Corriere*. However, the Petitioner did not include the required date and author of the material. In addition, the Petitioner did not present documentary evidence establishing that *Il Corriere* is a professional or major trade publication. Similarly, the Petitioner provided a screenshot from ilprofumodelladolcevita.com reflecting an interview of him without offering evidence demonstrating that the website is a major medium.

Furthermore, the Petitioner submitted articles posted on the following websites: varsity.co.uk, edinburghguide.com, and festmag.co.uk. However, while the articles briefly mention the Petitioner one time as an actor or performer, they are not about him but reviews for shows and plays. Articles that are not about a petitioner do not fulfill 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).[6] Moreover, for the reasons discussed above, although the Petitioner

[3] *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 7.
[4] *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 7 (finding that evidence of published material in professional or major trade publication or in other major media publications should establish that the circulation (on-line or in print) is high compared to other circulation statistics and show the intended audience of the publication).
[5] *Id.*
[6] *See also* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 7 (providing that the published material should be about

presented screenshots from *Similar Web* relating to Internet rankings and traffic, he did not explain the significance of such statistics and how they reflect the websites' status as major media.

Finally, the record contains a screenshot from Bouquet TV posted on *YouTube* along with a letter from the television station indicating an episode "featuring [the Petitioner], has been programmed and broadcast[ed] in our circuit," and Bouquet TV encompasses multiple television channels, including Italia 2. The Petitioner, however, did not provide a transcript of the episode reflecting published material about him. Further, although he submitted a screenshot from *Wikipedia* regarding a brief background for Italia 2, the Petitioner did not establish that the episode aired on Italia 2, nor did he show that *Wikipedia* demonstrates that Italia 2, as well as Bouquet TV, are major media.

Because the Petitioner did not establish that his evidence fulfills the eligibility requirements, we withdraw the findings of the Director for this criterion.

B. 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. 953, 954 (Assoc. Comm'r 1994). Here, the Petitioner has not shown that the significance of his work is indicative of the required sustained national or

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the petitioner relating to his or her work in the field, not just about his or her employer or another organization with whom he or she is associated).

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 reasons discussed above, the Petitioner has not demonstrated his eligibility as an individual of extraordinary ability. In visa petition proceedings, the petitioner bears the burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012). Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of C-B-*, ID# 2755335 (AAO Apr. 9, 2019)