U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF M-M-

DATE: AUG. 14, 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, PETITION FOR ALIEN WORKER

The Petitioner, an art director and visual effects 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 Director of the Nebraska Service Center denied the Form I-140, Immigrant Petition for Alien Worker, concluding that the Petitioner had satisfied only two of the ten initial evidentiary criteria, of which he must meet at least three.

On appeal, the Petitioner submits a brief additional evidence and asserts that he meets at least three of the ten criteria and is eligible for the benefit sought.

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
>
> (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 he or she is able to demonstrate that the standards at 8 C.F.R. § 204.5(h)(3)(i)-(x) do not readily apply to the individual'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

As noted above, the Petitioner is an art director and visual effects artist. As he has not established that he has received a major, internationally recognized award, he must demonstrate that he satisfies at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x).

A. Regulatory Criteria

The Director found that the Petitioner met two criteria: published material under 8 C.F.R. § 204.5(h)(3)(iii), and display under 8 C.F.R. § 204.5(h)(3)(vii). The record contains an article about the Petitioner and his work in the visual arts as well as documentation establishing that the article was published in a major medium. It also includes articles, letters of recommendation, and an award showing that his paintings have been displayed as part of the Société Nationale des Beaux Arts' (SNBA) annual exhibition.[1] Accordingly, we agree with the Director that he has met the criterion for published material and for display.

The record also establishes that the Petitioner meets the criterion for lesser awards under 8 C.F.R. § 204.5(h)(3)(i). It shows that, as a member of the United States delegation, he received the 2011 Special Prize in painting given at the [redacted] annual exhibition in [redacted]. The record includes media and letters showing that this prize is nationally recognized as an award for excellence in the visual

[1] Evidence in the record indicates that this was an artistic exhibition, as required.

arts. Accordingly he has demonstrated that he meets the criterion for awards. Since he has established that he fulfills at least three regulatory criteria, we will evaluate the totality of the evidence in the context of the final merits determination below.

B. Final Merits Determination

As the Petitioner has submitted the requisite initial evidence, we will evaluate whether he has demonstrated, by a preponderance of the evidence, his sustained national or international acclaim and whether the record demonstrates that he is one of the small percentage at the very top of the field of endeavor, and that his achievements have been recognized in the field through extensive documentation. In a final merits determination, we analyze a petitioner's accomplishments and weigh the totality of the evidence to determine if her successes are sufficient to demonstrate that he has extraordinary ability in the field of endeavor. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20.[2] In this matter, we determine that the Petitioner has not shown his eligibility.

The Petitioner indicates that he has worked "as an internationally recognized Art Director and Visual Effects Artist in the United States for nearly a decade." As mentioned, the record shows that, as a representative from the United States, he received the Grand Prize in painting at the [redacted] annual exhibition at the [redacted] in 2011. The record also contains multiple letters of recommendation showing that the Petitioner has worked as a visual effects artist on commercials, movies, and television shows from 2014 through 2018.[3] The record, however, does not demonstrate that these achievements, when viewed in the totality, are reflective of a "career of acclaimed work in the field" as contemplated by Congress or place him among the small percentage at the very top of his field. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); 8 C.F.R. § 204.5(h)(2) and (3).

Regarding his receipt of lesser nationally or internationally recognized awards, as discussed above the record establishes the Petitioner's receipt of such an award in the field of visual arts in 2011. While we do not question that this prize is widely considered to be a significant achievement for a visual artist, the Petitioner did not demonstrate that his receipt of this single award approximately eight years ago is indicative of the required *sustained* national or international acclaim. *See* section 203(b)(1)(A) of the Act. Nor does the record as a whole reflect such acclaim or include extensive documentation demonstrating that his achievements have been recognized in the field. *Id.*

As we note above, the Petitioner also met the criterion for published material under 8 C.F.R. § 204.5(h)(3)(iii). He offers three brief articles about his work in fine arts and visual effects published in *La Stampa*, *L'Espresso*, and *Il Venerdì di Repubblica*, but establishes that only one of these

[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 4 (Dec. 22, 2010), https://www.uscis.gov/policymanual/HTML/PolicyManual.html (stating that USCIS officers should then evaluate the evidence together when considering the petition in its entirety to determine if the petitioner has established by a preponderance of the evidence the required high level of expertise of the immigrant classification).

[3] The record includes also screenshots from the website IMDb.com about the various television shows and commercials the Petitioner has worked on, and other evidence we have reviewed but do not specifically discuss here.

publications, *Il Venerdì di Repubblica*, represents a major publication.[4] The record also reflects that the Petitioner was interviewed about his work for the television show [redacted]" a show appearing on the Italian television network RAI, but does not demonstrate that this network is a major medium.[5] Here, the Petitioner did not demonstrate that a single qualifying article in a major medium published over two years ago is consistent with the sustained national or international acclaim necessary for this highly restrictive classification. *See* section 203(b)(1)(A) of the Act. In addition, the commentary for the proposed regulations implementing section 203(b)(1)(A)(i) of the Act provide that the "intent of Congress that a very high standard be set for aliens of extraordinary ability is reflected in this regulation by requiring the petitioner to present more extensive documentation than that required" for lesser classifications. 56 Fed. Reg. 30703, 30704 (July 5, 1991). Even considering the totality of the two additional articles and television interview, the Petitioner has not shown that this press coverage represents a level of success and recognition consistent with being among "that small percentage who [has] risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2).

With respect to the display criterion at 8 C.F.R. § 204.5(h)(3)(vii), the record reflects that the Petitioner's work was displayed at the [redacted] in 2011 as part of the [redacted] artistic exhibition related to the prize discussed above. However, while we acknowledge the significance of that event, the record lacks evidence showing that the Petitioner remains nationally or internationally acclaimed based on his achievement over eight years ago, or demonstrating additional achievements that have received recognition in the field.[6] *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2) and (3).

Beyond the three criteria that the Petitioner satisfied, we consider additional documentation in the record in order to determine whether the totality of the evidence demonstrates eligibility. Here, for the reasons discussed below, we find that the evidence neither fulfills the requirements of any further evidentiary criteria nor contributes to an overall finding that the Petitioner has sustained national or international acclaim and is among the small percentage of the top of his field.

With respect to the Petitioner's memberships, he provides evidence confirming his membership with the Visual Effects Society (VES) and with the Associazione Effetti Visivi (AVFX). The record contains membership requirements for these associations, but they do not reflect that membership requires outstanding achievements in the field as judged by recognized experts in that field.[7] For example, VES requires that applicants "must be actively engaged in the production or creation of

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[4] The record contains correspondence from the editors of *La Stampa* and *L'Espresso* providing circulation statistics, as well as a printout entitled "Media tool kit" showing average circulation and website monthly visitors for these publications and selected others. However, these materials do not establish that either the on-line or print circulation of these publications is high relative to those with which they are being compared. *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 7.

[5] The Petitioner provides a document titled "Media tool kit" which lists viewing statistics for what appear to be different television stations. However, he does not indicate on which channel this interview aired, nor does he provide evidence demonstrating that his appearance on Community rises to the level indicative of national acclaim.

[6] While the Petitioner provides *Wikipedia* print outs related to two 2016 motion pictures, [redacted] and [redacted] as well as the television show [redacted]" as evidence that his work has been displayed in artistic exhibitions, these materials do not reference the Petitioner, establish that it was his work displayed in these media, or show that his work received recognition in the field.

[7] 8 C.F.R. § 204.5(h)(3)(ii); *see also* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 6.

visual effects … for not less than five (5) years." Similarly the correspondence from AVFX's president and co-founder states "we are looking for people that [have] worked in the industry for at least 5 years and have worked in internationally recognized and successful projects." Here the Petitioner has not provided evidence demonstrating that these associations limit their membership to individuals with renowned endeavors nor has he otherwise demonstrated the significance of these memberships such that they contribute to a finding that the Petitioner has sustained national or international acclaim. *See* section 203(b)(1)(A)(i) of the Act and 8 C.F.R. § 204.5(h)(3).

The Petitioner also asserts that he has served in a leading or critical role for organizations or establishments that have a distinguished reputation.[8] As evidence of his leading role, the Petitioner provides multiple letters from employees of [redacted], [redacted], and [redacted], organizational charts for each of these visual effects studios, and information about them establishing their distinguished reputations. Regarding his claim that he served in a leading role for these organizations, the record does not support his assertions. Each organization chart confirms that the Petitioner served as a lead compositor for several projects, and the accompanying letters indicate generally that, in this role, the Petitioner served as a freelance artist in charge of executing these projects. However, while the Petitioner led isolated projects, considered within the hierarchy of the organizational charts, the evidence does not demonstrate that he served in a leading role for the organization itself.

The Petitioner also references the abovementioned letters of recommendation in support of his claim that he served in a critical role for these organizations. While the letters reflect his work in the field on a variety of projects, they lack information demonstrating that the significance of his contributions are commensurate with those at the very top of his field of endeavor or that they have brought him national or international acclaim. For example, [redacted] head of production for [redacted] asserts that the Petitioner "was the key element for the success of the [redacted] which received the Gold prize at the [redacted] awards which "honor excellence in local, regional television across all screens."[9] She does not indicate whether he was a named recipient on that award or provide detailed information to support her assertion crediting him with the success of the project. Nor does the record otherwise include evidence that, beyond [redacted], the field has recognized the Petitioner's contribution to the production. [redacted], chief executive officer of [redacted] similarly provides a detailed description of the Petitioner's contributions as a visual artist and describes his role on a specific project, but only asserts generally that his success in leading this project resulted in new business revenue. Here the evidence does not sufficiently distinguish his work from others in his field or show that it reflects a "career of acclaimed work in the field." *See* 8 C.F.R. § 204.5(h)(2), H.R. Rep. No. 101-723 at 59. Therefore, this evidence does not support a finding that his contributions are indicative of a level of success consistent with being among "that small percentage who [has] risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2).

The record as a whole, including the evidence discussed above, does not establish the Petitioner's eligibility for the benefit sought. The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than those progressing toward the top. USCIS has long held that even athletes performing at the major league level do not automatically meet the statutory standards for classification as an individual of "extraordinary ability." *Matter of*

[8] 8 C.F.R. § 204.5(h)(3)(viii); *see also* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 10.

Price, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994). While the Petitioner need not establish that there is no one more accomplished to qualify for the classification sought, we find the record insufficient to demonstrate that he has sustained national or international acclaim and is among the small percentage at the top of his field. *See* section 203(b)(1)(A)(i) of the Act and 8 C.F.R. § 204.5(h)(2).

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 Beneficiary, 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

For the reasons discussed above, the Petitioner has not established 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 M-M-*, ID# 3626108 (AAO Aug. 14, 2019)