U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF A-S-C-J-

DATE: FEB. 4, 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a tango dancer and teacher, 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, arguing that he meets at least three of the 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,
>
> (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 has performed and taught at various venues around the world, including 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).

A. Evidentiary Criteria

The Director found that the Petitioner met the following two criteria: published material under 8 C.F.R. § 204.5(h)(3)(iii) and judging under 8 C.F.R. § 204.5(h)(3)(iv). The record contains four qualifying articles about the Petitioner in major media. In addition, the record reflects that the Petitioner judged a tango competition. Accordingly, we agree with the Director's decision for these two criteria. In addition, although the Petitioner never claimed eligibility for this criterion, the record shows that the Petitioner has danced and performed at exhibitions thereby satisfying the artistic display criterion under 8 C.F.R. § 204.5(h)(3)(vii). Therefore, the Petitioner has established that he fulfills at least three regulatory criteria, and 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 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 his 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. In this matter, we determine that the Petitioner has not shown his eligibility.

The Petitioner submitted documentary evidence reflecting his involvement with tango dance for over 25 years. For instance, he performed as part of the and In addition, he danced in the film, and in productions such as and Most recently, he participated in Further, the Petitioner runs the and has provided instruction at dance schools, such as , and to dance students. As mentioned above, the Petitioner had four qualifying articles published about him in major media, judged a competition, and performed at various venues. The record, however, does not demonstrate that his achievements are reflective of a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990).

Regarding published material about him, the Petitioner offered four qualifying articles in major media. Specifically, the Petitioner presented three articles from *Clarin* (2002, 2004, and 2007) and one article from *La Nacion* (2007). While the Petitioner provided other documents, such as playbills, posters, advertisements, they do not reflect published material about him in professional or major trade publications or other media. For instance, he submitted a page from the section of the *New York Times* announcing a tango show at the rather than an article from the publication discussing him and his work. In addition, the Petitioner's presented approximately 10 other articles about him but did not submit supporting evidence establishing that publications they appeared in , such as the *Woodstock Times* and *Daily Freeman,* are considered professional or major trade publications or other major media.[1] Instead, the Petitioner's translated material made claims relating to the history and status of the publication. For example, a translation for an article from *Cronica* asserted that "[i]t is one of the largest circulated newspapers in the country" and "[i]n 2006 they had a daily circulation of 58,432 copies." Although the Petitioner provided certified translations, the record does not reflect that the foreign language articles contained the translator's assertions.[2]

Notwithstanding the above, the Petitioner did not demonstrate that four articles published over 10 years ago are 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

[1] We note that the majority of his evidence did not contain the required title, date, or author of the material. 8 C.F.R. § 204.5(h)(3)(iii).

[2] Any document in a foreign language must be accompanied by a full English language translation. 8 C.F.R. § 103.2(b)(3). The translator must certify that the English language translation is complete and accurate, and that the translator is competent to translate from the foreign language into English. *Id.*

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 other evidence and articles, the Petitioner has not shown that his press coverage is 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).

As it pertains to his service as a judge of others, an evaluation of the significance of his experience is appropriate to determine if such evidence is indicative of the extraordinary ability required for this highly restrictive classification. *See Kazarian*, 596 F. 3d at 1121-22. The Petitioner provided evidence showing that he served as a judge at the in 2017 and 2018, in 2016, and in 2011. However, the Petitioner did not establish that his judging instances places him among the small percentage at the very top of his field. *See* 8 C.F.R. § 204.5(h)(2). He did not show, for example, how his judging experience compares to others at the top of the field.

In addition, the Petitioner did not demonstrate that his recent judging occurrences contribute to a finding that he has a "career of acclaimed work in the field" as contemplated by Congress or indicative of the required sustained national or international acclaim. *See* H.R. Rep. No. at 59 and section 203(b)(1)(A) of the Act. The Petitioner did not show, for instance, that he garnered wide attention from the field based on his work as a tango judge.

As discussed relating to the artistic display of his work, the Petitioner has performed in a movie, on Broadway in New York, New York, and at area festivals. In addition to the performances mentioned above, the record indicates that he participated in musicals, such and Further, the Petitioner danced in a private tango show with the as well with orchestras and operas. As it is expected that a tango dancer, such as the Petitioner, would exhibit his artistic work in front of audiences, we will evaluate the extent to which the display of his work is reflective of acclaim consistent with this classification. While the Petitioner presented evidence showing a wide range of experience from movies, musicals, shows, and concerts, he did not demonstrate, for example, that *his* work brought wide praise from critics, drew notable crowds, raised attendance, or was responsible for the success or standing of the events.[3] The Petitioner's evidence does not distinguish his performances or work from others in his field or show that it reflects a "career of acclaimed work in the field." H.R. Rep. No. 101-723 at 59.

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.

[3] Although the Petitioner has experience a performing artist, he did not claim, nor does the record reflect, commercial successes under the regulation at 8 C.F.R. § 204.5(h)(3)(x).

With respect to his contributions to the field, the record contains numerous recommendation letters that praise his talents and skills as a tango dancer. For example, [redacted] a salsa performer and instructor, stated that the Petitioner is "one of the world's great living Argentine Tango performers" and "has an innate talent as a dancer."[4] While the authors admire the Petitioner, they do not show that he has significantly influenced the field placing him in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). Moreover, although the letters credit the Petitioner for working with and teaching other tango dancers, they do not establish that he has made contributions that have been of major significance to the greater field. For instance, [redacted] claimed that the Petitioner's "impact of [his] own skills as a professional tango dancer really stands out" and "has had a profound influence on [his] personal development as a tango professional." Here, the Petitioner did not establish how his impact on [redacted] or any of his other students, is recognized by the overall field as having been majorly significant consistent with the sustained national or international acclaim necessary for this highly restrictive classification. *See* section 203(b)(1)(A) of the Act.

Moreover, the Petitioner claimed that his roles as a cast member in various productions mentioned above as evidence of his leading or critical roles for organizations or establishments that have a distinguished reputation. However, the Petitioner did not demonstrate how productions and shows qualify as "organizations or establishments." Regardless, the Petitioner did not establish that his roles have been recognized by the field as being significantly important or viewed as notably influential. The submitted documentation, for instance, does not reflect that the Petitioner has somehow impacted the field through his work demonstrating attention at a level commensurate with those at the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2). In addition, the Petitioner's evidence does not distinguish his performances or work from others in his field or show that it reflects a "career of acclaimed work in the field." H.R. Rep. No. 101-723 at 59.

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 Price*, 20 I&N Dec. at 954. 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; 8 C.F.R. § 204.5(h)(2).[5]

[4] Although we cite to a sample of letters, we have reviewed and considered each one.

[5] As the Petitioner has not demonstrated his extraordinary ability under section 203(b)(1)(A)(i) of the Act, we need not consider whether he intends to continue working in the area of extraordinary ability under section 203(b)(1)(A)(ii).

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

For the reasons discussed above, the Petitioner has not established his eligibility as an individual of extraordinary ability.

ORDER: The appeal is dismissed.

Cite as *Matter of A-S-C-J-*, ID# 1982273 (AAO Feb. 4, 2019)