U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF I-K-

DATE: FEB. 7, 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, an architect, 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 petition, concluding that the Petitioner had not satisfied any of the ten initial evidentiary criteria, of which he must meet at least three. *See* 8 C.F.R. § 204.5(h)(3)(i)-(x).

On appeal, the Petitioner submits additional evidence, claiming that he meets four of the ten criteria under 8 C.F.R. § 204.5(h)(3)(i)-(x), and qualifies as an individual of extraordinary ability.

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

I. LAW

Section 203(b)(1)(A) of the Act makes visas available to certain immigrants 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 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 the petitioner does not submit this evidence, then he or she must provide documentation that meets at least three of the ten criteria listed under 8 C.F.R. § 204.5(h)(3)(i)-(x) (including items such as qualifying awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the submitted material in a final merits determination and assess whether the record, as a whole, 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, 1119-20 (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, 1343 (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

According to his January 2017 statement, the Petitioner seeks to enter the United States to work as an architect and to "reach [his] maximum as an artist." He claims extraordinary ability in the field of "architecture and design," and offers evidence showing that he studied architecture and design in his native country, Georgia, and in Portugal. In 2017, while in the United States, he worked as a designer and architect for , a design studio in New York.

The Petitioner has not alleged, and the record does not demonstrate, that he has received a major, internationally recognized award. *See* 8 C.F.R. § 204.5(h)(3). As such, he must provide documentation that meets at least three of the ten criteria listed under 8 C.F.R. § 204.5(h)(3)(i)-(x) to satisfy the initial evidence requirements. While he asserts on appeal that he meets the following four criteria, the record does not support this assertion.

> *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 offers documentation confirming his receipt of the following:

(1) A third prize "for the best architectural project of New Head Office in Georgia," issued by

(2) A "First Pize [*sic*]" for " " issued by the of Georgia; and

(3) A second place recognition in the as relating to issued by in

While the Petitioner asserts on appeal that the above accolades are "held on international level," he has not shown that he satisfies this criterion. Even assuming that the contenders for the prizes came from different parts of the world, to satisfy this criterion, the Petitioner must present evidence that the prizes are recognized in the field on a national or international level. Although the record contains some information about the award issuing entities, it lacks sufficient evidence confirming the awards that the Petitioner received enjoy national or international recognition for excellence in the field of architecture and design. For example, he has not presented materials showing that publications or news outlets with a national or international audience reported on the awards or their recipients, or other documentation confirming that these honors are accepted in the field as national or international recognition for excellence. The Petitioner has therefore not met 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 maintains that he meets this criterion because his designs and brief descriptions of the designs were posted on Online printouts from the website indicate that it is a digital architecture and design magazine, has "4 million readers and 450,000 newsletter subscribers," and was named one of the top 100 design influencers in the world by magazine. Even if this publication qualifies as a professional or major trade publication or other major media, the Petitioner has not shown that he satisfies this criterion.

Specially, the record reveals that the "has received [the Petitioner's projects] from our DIY submissions feature, where we welcome our readers to submit their own work for publication." The Petitioner has not shown that such self-promotional submissions constitute "[p]ublished material about [him] . . . relating to [his] work in the field," as required by the criterion. Moreover, he has not provided information relating to the author(s) of the brief descriptions of his designs posted on as required under the regulation. Accordingly, the Petitioner has not satisfied 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 record includes a number of project spec books from the design studio listing the Petitioner as the designer or architect. The evidence confirms that builders have completed some of these projects. The project spec books are materials the studio created for its clients, offering

recommendations on the building and design of the projects. The Petitioner has not demonstrated that his work in the project spec books was intended for anyone other than the clients, or that the sharing of these materials between the studio and its customers qualifies as "the display of [his] work . . . at artistic exhibitions or showcases," as required under the regulation.

Similarly, the Petitioner has not established that a social media posting meets this criterion. Specifically, he claims that he satisfies this criterion because [redacted] and [redacted] reposted his photographs on their Instagram accounts. He, however, has not pointed to any legal authority, such as case law or regulatory or statutory language, supporting the position that businesses' social media accounts constitute "artistic exhibitions or showcases."

The Petitioner also asserts the buildings that have been completed based on his designs satisfy this criterion. While these projects, located on the streets of New York City, confirm his work as an architect and designer, they are not displays at artistic exhibitions or showcases. Examples of qualifying displays include those that are held at galleries, museums, or other artistic venues. In light of the above, the Petitioner has not met this criterion.

> *Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.* 8 C.F.R. § 204.5(h)(3)(ix).

The Petitioner's tax documents show that in 2017, he earned $39,150 in "wages, salaries, tips" and "business income." He has not explained if his entire earnings derived from his work as a designer and architect. Assuming such to be the case, the record, which does not include comparative compensation data in the field, is insufficient to show that he "has commanded a high salary or other significantly high remuneration for services, in relation to others in the field," as required by the regulation.

On appeal, the Petitioner explains that his earnings have been affected because he is not a permanent resident in the United States. This criterion requires evidence of his "high salary or other significantly high remuneration," without taking into consideration of his immigration status. While it might be true that the Petitioner's income has been impacting by a number of factors, it remains that he has not established his salary or remuneration is qualifying under the regulation. He has therefore not satisfied this criterion.

III. CONCLUSION

Based on the evidence in the record, including reference letters and other documentation not specifically discussed in this decision, we find that 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, upon a review of the record in its entirety, we conclude that it does not support a finding that he has established the acclaim and recognition required for this classification.

The Petitioner seeks a highly restrictive visa classification, intended for individuals who are already at the top of their respective fields, rather than for individuals progressing toward the top. U.S. Citizenship and Immigration Services 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 academic and professional accomplishments is indicative 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; 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. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's 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 I-K-*, ID# 2000665 (AAO Feb. 7, 2019)