U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF G-M-M-

DATE: JUNE 5, 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, an artist and repertoire (A&R) executive, 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 she must meet at least three.

On appeal, the Petitioner submits additional documentation and a brief asserting that she fulfills at least three of the ten 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). 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

At the time of filing, the Petitioner was working as senior director for A&R at [redacted] a label of [redacted] Because the Petitioner has not indicated or established that she has received a major, internationally recognized award, she must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x).

A. Evidentiary Criteria

In denying the petition, the Director found that the Petitioner met the original contributions and leading or critical role criteria under 8 C.F.R. § 204.5(h)(3)(v) and (viii), respectively. On appeal, the Petitioner maintains that she also meets the commercial successes in the performing arts criterion at 8 C.F.R. § 204.5(h)(3)(x). Upon review, we conclude that the record does not support a finding that the Petitioner meets the requirements of at least three criteria.

> *Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.* 8 C.F.R. § 204.5(h)(3)(v).

The Director found that that the Petitioner had demonstrated her eligibility under this criterion. For the reasons outlined below, we find that the Petitioner has not submitted sufficient documentary

evidence showing that she meets the requirements of this criterion. Accordingly, the Director's determination on this issue will be withdrawn.

The Petitioner indicated that she has contributed original acts to the music industry, stating:

> [W]ithout [the Petitioner's] identifying eye, vision and guidance, the music industry would not have artists such as [redacted], to name a few, as we know them today. It is her original thought, her original interactions, her original visions, work sessions, her pep talks, and overall actions etc. that spawned these original acts and, but for her actions, they would not be part of the industry as we know them.

As evidence under this criterion, the Petitioner submitted information about musicians she claims to have developed and various letters of support discussing her work in the music industry. In order to satisfy the regulation at 8 C.F.R. § 204.5(h)(3)(v), a petitioner must establish that not only has she made contributions that were original but that they have been of major significance in the field. For example, a petitioner may show that her particular contributions have widely influenced the field, have remarkably impacted the field, or have otherwise risen to a level of major significance in the field. As discussed below, the letters do not offer sufficiently detailed information, nor does the record include adequate corroborating documentation, to demonstrate the nature of specific original contributions that the Petitioner has made to the field that have been considered to be of major significance.

The record includes letters from the Petitioner's professional associates asserting that she has made original contributions in the music industry.[1] For instance, [redacted], a senior executive for [redacted], an entertainment agency that represents songwriters, producers, artists, mixers, and engineers, indicated that the Petitioner "identified the raw talent in and signed [redacted] along with overseeing successful campaigns for Grammy Nominated [redacted] and British pop sensation [redacted]."[2] He further stated that "those original contributions to the industry are because of [the Petitioner]." Similarly, [redacted], partner at [redacted], a law firm representing music industry clients, contended that the Petitioner has "brought original contributions to the music business, finding and contributing to the development of several recording artists. She has worked with and made meaningful contributions to the careers of [redacted] and several others." The evidence, however, is not sufficient to demonstrate that the success of the aforementioned artists was attributable to the Petitioner's A&R role, nor does the record show that her specific work with them rises to the level of contributions of major significance in the field.

Regarding the Petitioner's work with [redacted], Senior Partner at [redacted], a law firm that represents talent in the sports and entertainment industries, stated that

[1] While we discuss a sampling of these letters, we have reviewed and considered each one.

[2] The record does not include letters of support from these four music artists discussing the Petitioner's impact on their careers or other corroborating evidence to support the references' claims that her work with these artists constituted contributions of major significance in the field. For example, while the record contains various media articles about [redacted] and her interactions with others in the recording industry, these articles do not mention the Petitioner or her effect on [redacted] development as a performing artist. Regardless, the articles and other evidence in the record are insufficient to demonstrate that the Petitioner's work with [redacted] was of major significance in the field.

the Petitioner "identified, signed and developed [redacted] Her early work activated his path to stardom, and the music industry will never be the same. I cannot overstate the impact [the Petitioner] had on [redacted] career, and ultimately the impact that had on the industry as a whole." While the Petitioner provided information about [redacted] from articles in Billboard, Wall Street Journal, Rolling Stone, Variety, Esquire, and Wikipedia, these articles do not mention the Petitioner or her impact on his music career. For example, the article in Wikipedia states: "After [redacted] sister in [redacted] played [redacted] demo for [redacted] the A&R at [redacted], [redacted] summoned [redacted] to [redacted]" This article further indicated that songwriter and producer [redacted] "introduced [redacted] to his future A&R manager at [redacted]" The record does not include sufficient information or evidence to show that the Petitioner's work with [redacted] constitutes a contribution of major significance in the field.

With respect to the Petitioner's involvement with [redacted], [redacted] president of [redacted], a producer and songwriter management company, indicated that the Petitioner managed [redacted] while working for [redacted]. He asserted that the Petitioner oversaw and facilitated "the songwriting sessions and the release campaign for [redacted] album [redacted] which debuted the Billboard chart at #3 and achieved Platinum status, and a Grammy Nomination." The record includes articles about [redacted] in Daily Mail, Billboard, and Wikipedia, but they do not mention the Petitioner or her work on the aforementioned album. Nonetheless, the evidence is not sufficient to demonstrate that the Petitioner's work on that album rises to the level of a contribution of major significance in the field.

In regard to the Petitioner's management of [redacted], [redacted], a music artist and songwriter, stated that the Petitioner's leadership helped [redacted] break "onto the [United Kingdom] market with huge impact and success, topping the charts and becoming the biggest new British pop sensation of that time." Additionally, she indicated: "[The Petitioner] recognized that my songwriting style would be a perfect fit for the sound and direction that she was guiding [redacted] towards . . . . I ended up becoming [redacted] main writing partner and landed 3 songs on her debut album, which debuted at #2 on the UK Album Chart." While [redacted] asserted that the Petitioner's management helped [redacted] become successful and facilitated their songwriting partnership, the record does not show that the Petitioner's guidance of [redacted] and work on her debut album represent contributions of major significance in the field.

The references' statements and articles relating to the aforementioned artists are not sufficient to show that the Petitioner's specific A&R work has widely influenced the recording industry or has otherwise risen to the level of contributions of major significance in the field. Without sufficient evidence demonstrating that her particular work constitutes original contributions of major significance in the field, the Petitioner has not established that she meets this criterion.

> Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. 8 C.F.R. § 204.5(h)(3)(viii).

The evidence shows that as senior director for A&R at [redacted], the Petitioner has performed in a critical role for a distinguished organization. Accordingly, the record supports the Director's finding that the Petitioner meets 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 she "has originated, developed and contributed original artistic acts to the music industry" and that the success of these acts "must be attributed to [the Petitioner] because she is the genesis of it." In his letter of support, [redacted] stated:

> [The Petitioner] and I worked closely together with [redacted] to create the original songs: [redacted] which formed their debut record '[redacted]'" The record is certified 4 x Platinum, it spent over a year in the ARIA [Australian Recording Industry Association] Albums Chart, reached #2 on the ARIA album chart, and was nominated for 3 x ARIA Awards. [The Petitioner] was instrumental in the launch of their career in America and internationally.

In addition, [redacted] letter indicated that he and the Petitioner "are working together on emerging artist [redacted] and that the Petitioner "has been instrumental in developing [redacted] as a songwriter." He further noted that the Petitioner "strategically formulates and creates the session collaborations for [redacted] to be able to write incredible material that result in song cuts and releases with major recording artists" such as [redacted], and [redacted] also asserted that "[w]ithout the Petitioner's work, the smash hit '[redacted]' written by [redacted] and released by pop group [redacted] would not have happened. It has achieved massive commercial success, double platinum status, [and] was a top 5 single" in the United Kingdom.

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.[3] Here, the record does not include a tracklist or credits for [redacted] or '[redacted]' identifying the Petitioner as having created or substantially contributed to these recordings. Nor is the evidence sufficient to demonstrate that the commercial successes of the above artists are mostly attributable to the Petitioner rather than their own musical talent.

On appeal, the Petitioner presents a letter from [redacted], partner at [redacted] "a global talent agency based in [redacted]." He indicates that he has "been working with [redacted] since [the Petitioner] brought them to my attention in 2010." [redacted] further explains that he is "responsible for procuring their shows and privy to their live touring earnings, and can attest to the fact that in 2015 they earned $8,126,060. In 2016 they earned $6,824,953 and in 2017 they earned $4,879,250 in touring alone." Additionally, he contends that the Petitioner "is integrally responsible for [redacted] success as she played a creative and pivotal role in discovering, packaging, and making the group what it is today." While the record includes a letter of support from [redacted] and [redacted]

[3] *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* 11-12 (Dec. 22, 2010), https://www.uscis.gov/legal-resources/policy-memoranda.

[redacted] expressing gratitude to the Petitioner for helping to launch their music careers, the evidence is not sufficient to demonstrate that their 2015-2017 tour earnings are attributable to the Petitioner's specific work. Instead, [redacted] tour earnings are attributable to their music performances and reflect their commercial successes. For the above reasons, the Petitioner has not established that she satisfies 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 and recognition of her A&R work are indicative of the required sustained national or international acclaim or that they are 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 she 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 she 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 G-M-M-*, ID# 2990891 (AAO June 5, 2019)