U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF C-R-A-H-

DATE: JUNE 18, 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a culinary chef and gastronomic consultant, 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, and a subsequent motion, concluding that the Petitioner had satisfied only one of the ten initial evidentiary criteria, of which he must meet at least three. In addition, the Director stated that the Petitioner did not demonstrate that he will continue to work in his field in the United States.

On appeal, the Petitioner submits additional documentation and a brief asserting that he fulfills at least three of the ten criteria and that he seeks to continue working in the culinary 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,
>
> (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

A. Evidentiary Criteria

Because the Petitioner has not indicated or 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). In denying the petition, the Director found that the Petitioner met the leading or critical role criterion under 8 C.F.R. § 204.5(h)(3)(viii). On appeal, the Petitioner maintains that he also meets the awards, membership, judging, original contributions, and scholarly articles criteria at 8 C.F.R. § 204.5(h)(3)(i)-(vi), respectively. Upon review, we conclude that the record does not support a finding that the Petitioner meets the requirements of at least three 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).

As evidence under this criterion, the Petitioner presented a certificate from the [redacted] stating that he received a [redacted] as [redacted] The record also includes two Facebook photographs dated [redacted] 2011 and an October [redacted] YouTube video[1] relating to [redacted] award ceremonies. In addition, the Petitioner provided a [redacted] 2016 article from Sunoticiero.com about a Venezuelan

[1] The information provided indicates that this YouTube video had "389 views."

foreign student recruiter who received a [redacted] award. He also submitted a [redacted] 2015 article from Nuestragaita.com, entitled '[redacted]' This article is about the song '[redacted]' and its songwriter and creator's receipt of the [redacted] award. With regard to that award, the article indicates that '[redacted]'"[2] The article further states: "'The [redacted] the highest award of the people of [redacted] proclaims the [redacted] . . . for the song [redacted] of the composer [redacted] considering as the hymn of the Venezuelans,' which was published by [redacted]' We note that the aforementioned articles and Facebook and YouTube material do not mention the Petitioner's receipt of a [redacted] as '[redacted]'

While the Petitioner has offered documentation from Facebook, YouTube, Sunoticiero.com, and Nuestragaita.com, this evidence is not sufficient to demonstrate that his [redacted] award is a nationally or internationally recognized prize or award for excellence in the field. For example, the Petitioner has not shown that the Sunoticiero.com and Nuestragaita.com coverage or Facebook and YouTube material are indicative of the [redacted] award's national or international recognition in the culinary field. He has not established therefore that he meets this regulatory criterion.

> *Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.* 8 C.F.R. § 204.5(h)(3)(ii).

The Petitioner contends that his membership in the [redacted]) meets this criterion. On motion to the Director, he provided information about [redacted] and his membership certificate showing a "paid thru date" of August 31, 2019. The record, however, does not show that the Petitioner was a member of [redacted] at the time the Form I-140 was filed on April 25, 2018. Eligibility must be established at the time of filing. *See* 8 C.F.R. § 103.2(b)(1). Regardless, the information and evidence he presented does not demonstrate that [redacted] requires outstanding achievements of its members or that their achievements are judged by recognized national or international experts. Accordingly, the Petitioner has not established that he meets 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 record contains news articles, advertisements for the Petitioner's cooking course, and his recipes in publications such as *La Verdad* and *El Venezolano de Panama*. The Petitioner, however, has not presented comparative statistics or other evidence indicating that these publications' readership elevates them to major media relative to other publications. Furthermore, regarding the advertisements for his cooking course, the Petitioner has not demonstrated that "published material" as referenced in

[2] [redacted] is one of the 23 states of Venezuela.

the regulation includes this type of promotional material.[3] Nor has the Petitioner shown that the articles including only his recipes constitute published material about him. This regulatory criterion requires "published material about the alien." Articles that are not about him do not meet this regulatory criterion. *See, e.g., Negro-Plumpe v. Okin,* 2:07-CV-00820 at *1, *7 (D. Nev. Sept. 2008) (upholding a finding that articles about a show are not about the actor). Finally, the record does not show that any of the remaining articles submitted for this criterion were about the Petitioner and in major media. For the above reasons, the Petitioner has not established that he meets this regulatory criterion.

> *Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.* 8 C.F.R. § 204.5(h)(3)(iv).

For this criterion, the Petitioner submitted an article entitled '[redacted]' This article announcing the aforementioned contest requests readers to send in their recipes for evaluation by a jury of five professionals that includes the Petitioner. In addition, he submitted a second article, entitled '[redacted]' which informs readers that "[n]ext Wednesday, October 11 is the deadline for reception of recipes from the public."

In order to meet this criterion, a petitioner must show that he has not only been invited to judge the work of others, but also that he actually participated in the judging of the work of others in the same or allied field of specialization.[4] The aforementioned articles that pre-date the judging process are not sufficient to demonstrate that the Petitioner later served as part of the jury for the [redacted] contest. Here, the Petitioner did not submit, for example, evidence from [redacted] staff or a follow-up article confirming his participation in selecting the finalists and winners who entered the recipe contest. The Petitioner therefore has not sufficiently demonstrated that he satisfies this criterion.

> *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).

As evidence under this criterion, the Petitioner submitted his book, entitled [redacted] and various letters of support discussing his work as a chef and culinary instructor. The Director considered this documentation, but found that it was not sufficient to demonstrate that the Petitioner's work constituted original contributions of major significance in the field. For the reasons discussed below, we agree with that determination.

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 the contributions have been widely implemented throughout

[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* 7 (Dec. 22, 2010), https://www.uscis.gov/policymanual/HTML/PolicyManual.html (providing that marketing materials created for the purpose of selling a petitioner's products or promoting his or her services are not generally considered to be published material about the petitioner).

[4] *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8.

the field, have remarkably impacted the field, or have otherwise risen to a level of major significance in the field.

On appeal, the Petitioner asserts that [redacted] was "used in the promotion and distribution of kitchen ware at a national and international level." He further contends that [redacted] is a major producer of kitchen cookware and would have chosen a chef of great renown in order to effectively promote its products among Latin American consumers and other users of [redacted] products."

The record includes excerpts from [redacted]s, including a biography page listing the Petitioner's educational training and accomplishments as a chef. In addition, he presents a January 2018 letter from [redacted], a legal representative for [redacted], stating that the Petitioner served "as chef advisor and creator of our recipe book . . . in the year 2008. He also gave us cooking courses and demonstrations for our promoters and clients, and he was gastronomic consultant as well."[5] The Petitioner also submits information about [redacted] (manufacturer of the [redacted] brand name) and [redacted] (a commercial kitchen equipment service company) from their websites. The aforementioned evidence, however, is not sufficient to demonstrate that his book rises to the level of a contribution of major significance in the culinary field. For instance, the record does not show that the Petitioner's book has widely influenced others in the culinary industry, that his collection of recipes in the book are highly renowned by recognized food critics, or that his original work otherwise constitutes contributions of major significance in the field.

As further evidence for this criterion, the Petitioner points to letters for support from two government officials discussing his development of an "innovative teaching concept." However, as discussed below, these 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.

For example, [redacted] Member of Congress [redacted] Illinois, stated that the Petitioner "envisions an academy to donate his time to educate and teach future chefs from all over the country. I had the opportunity to observe many of his presentations and you can feel the passion and time he puts into it."

Likewise, [redacted] Alderman for [redacted] Ward, asserted that the Petitioner has "designed a powerful project that would bring benefits to the residents" of her ward through adding jobs and educating people in the culinary arts. She further explained: "The café-concert project is based on an affordable school of culinary arts training where students can develop skills and reinforce their knowledge including implementing their own internship on-site. The concept . . . will include content knowledge on catering services, gastronomic advising, and at-the-table-etiquette." While [redacted] claimed that that the Petitioner has "implemented the concept at the international level before arriving in the United States," the record does not show that his concept has widely influenced the field beyond the programs where he taught or has otherwise risen to the level of contributions of major significance in the field. The language of this regulatory criterion requires that the Petitioner's original

[5] [redacted] does not provide any sales information for the Petitioner's book or offer specific examples of its impact in the culinary field.

contributions be "of major significance in the field" rather than mainly affecting his students. *See Visinscaia*, 4 F. Supp. 3d at 134-35 (upholding a finding that a ballroom dancer had not met this criterion because she did not corroborate her impact in the field as a whole). Without sufficient evidence demonstrating that his work constitutes original contributions of major significance in the field, the Petitioner has not established that he meets this criterion.

> *Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.* 8 C.F.R. § 204.5(h)(3)(vi).

As discussed, the Petitioner provided his recipe book, entitled [redacted] The record, however, does not include sufficient evidence to demonstrate that this work constitutes a scholarly article in a professional or major trade publication or form of major media.[6] Based on the foregoing, he has not demonstrated that he meets this regulatory 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 Director found that that the Petitioner had demonstrated his eligibility under this criterion. For the reasons outlined below, we find that the Petitioner has not submitted sufficient documentary evidence showing that he meets the requirements of this criterion. Accordingly, the Director's determination on this issue will be withdrawn.

The Petitioner asserted that he has performed in a leading or critical role for [redacted], the Embassy of the [redacted] in Panama, and the [redacted] Consulate in [redacted] If a leading role, then evidence must establish that a petitioner is or was a leader. A title, with appropriate matching duties, can help to establish if a role is or was, in fact, leading.[7] Regarding a critical role, the evidence must demonstrate that a petitioner has contributed in a way that is of significant importance to the outcome of the organization or establishment's activities. It is not the title of a petitioner's role, but rather the performance in the role that determines whether the role is or was critical.[8] In addition, this criterion requires that the organizations or establishments must be recognized as having a distinguished reputation, which is marked by eminence, distinction, or excellence.[9]

The record includes letters of support from the above organizations discussing the Petitioner's work.[10] For example, [redacted], Manager of Food and Beverages and Banquets for the [redacted] indicated that he previously supervised the Petitioner's work at [redacted] stated that the Petitioner was in charge of [redacted]s Peruvian, Thai, French, Mexican, and Italian Gastronomic Festivals and that he "taught training courses to the kitchen staff." In addition, [redacted]

[6] A scholarly article should be written for "learned" persons in the field. "Learned" is defined as having or demonstrating profound knowledge or scholarship. Learned persons include all persons having profound knowledge of a field. *See* USCIS Policy Memorandum PM 602-0005.1 *supra*, at 9.

[7] *See* USCIS Policy Memorandum PM-602-0005.1, *supra*, at 10.

[8] *Id.*

[9] *Id* at 10-11.

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

[redacted] Food and Beverage Assistant, [redacted] asserted that the Petitioner "hosted gastronomic festivals like: Gastronomic and Cultural Peruvian Festival, Asian Gastronomic Festival, French Gastronomic Festival" and trained the general kitchen staff in food preparation. This evidence, however, does not show that the Petitioner's role hosting the aforementioned festivals reflects his leading or critical role for [redacted] overall. For instance, the letters from [redacted] did not contain detailed and probative information that specifically addressed how the Petitioner's role as a guest chef for various festivals was leading or critical for the organization. Moreover, their letters did not explain how the Petitioner's temporary role was leading compared to the hotel's full-time staff positons such as its executive chef or manager, nor did their statements indicate that the Petitioner's festival work was of significant importance for [redacted] success or standing in the industry so as to demonstrate a critical role. Furthermore, while the record contains information about [redacted] from the website of [redacted] the company that owns the hotel, this documentation is not sufficient to demonstrate that the hotel has achieved a distinguished reputation.

In addition, the Petitioner presented a May 2010 certificate of recognition from the Embassy of the [redacted] in Panama for "his participation in different types of barbeque preparing, during the [redacted], performed in [redacted]." He also provided a letter from the [redacted] Consulate in [redacted] thanking him for the food he "prepared to be served at three cultural events displaying and discussing [redacted]" in [redacted] 2018. These cultural events for the [redacted] Consulate, however, post-dated the filing of the petition. *See* 8 C.F.R. § 103.2(b)(1). Nonetheless, while the submitted documentation shows that the Petitioner prepared food for various diplomatic events, it does not demonstrate that he performed in a leading or critical role for either the [redacted] Embassy or the [redacted] Consulate. Here, the Petitioner did not establish that his role was leading among these organizations' staff or that he contributed in an important way to the organizations' overall success or standing. Further, although the Petitioner offered information about the Embassy of the [redacted] in Panama from EmbassyPages.com, these "Facts About the Embassy" are not sufficient to demonstrate it has a distinguished reputation. Moreover, the record does not include supporting evidence indicating that the [redacted] Consulate in [redacted] has garnered a distinguished reputation.

Finally, with regard to the Petitioner's work for [redacted], the information in the letters from these organizations is not sufficient to demonstrate that his culinary and instructional duties were leading or critical to the overall organizations, nor has he adequately demonstrated their distinguished reputation. For these reasons, the Petitioner did not demonstrate that he meets this criterion.

In light of the above, the Petitioner has not established that he meets at least three of the evidentiary criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

B. Continuing Work in the Area of Extraordinary Ability[11]

The Petitioner presented a personal statement detailing his plans for work in the United States. He stated that he intends to cater civil and social events for foreign consulates in [redacted] open his own

[11] *See* section 203(b)(1)(A)(ii) of the Act; 8 C.F.R. § 204.5(h)(5).

restaurant, and develop his café-concert project involving an affordable school of culinary arts training. In addition, the Petitioner provided a letter from the [redacted] Consulate in [redacted] expressing interest in having him work with their staff "in the catering of our important social and civic events." Furthermore, with respect to his café-concert project, the record includes a letter from [redacted] professor at [redacted] University, asserting that she plans to partner with the Petitioner on that project. She further indicated: "I believe that [redacted]. . would benefit with having a café-concert in which education and cooking are the basis of success and community empowerment." We find the aforementioned information and evidence sufficient to demonstrate that the Petitioner seeks to continue work in his area of expertise in the United States pursuant to the regulation at 8 C.F.R. § 204.5(h)(5). Accordingly, the Director's determination on this issue is withdrawn.

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

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 his 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 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 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 C-R-A-H-*, ID# 3524020 (AAO June 18, 2019)