U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF M-M-M-

DATE: MAR. 7, 2019

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, a barista, seeks classification as an individual of extraordinary ability. 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 Acting Director of the Nebraska Service Center denied the Petitioner's Form I-140, Immigrant Petitioner Alien Worker. We subsequently dismissed the Petitioner's appeal.[1]

The matter is now before us on a motion to reopen. Upon review, we will deny the motion.

I. LAW

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 submits qualifying evidence under at least three criteria, we will then determine whether the totality of 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.[2]

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[1] *See Matter of M-M-M-*, ID# 1521185 (AAO July 16, 2018).

[2] *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).

A motion to reopen is based on documentary evidence of *new facts*. The requirements of a motion to reopen are located at 8 C.F.R. § 103.5(a)(2). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

II. PROCEDURAL HISTORY

The Director denied the petition, finding that the Petitioner satisfied only two of the initial evidentiary criteria, awards under 8 C.F.R. § 204.5(h)(3)(i) and judging under 8 C.F.R. § 204.5(h)(3)(iv), of which he must meet at least three. In dismissing the appeal, we also determined that the Petitioner fulfilled only those two criteria and concluded that he did not demonstrate eligibility for his only other claimed criterion, published material under 8 C.F.R. § 204.5(h)(3)(iii). In the current motion to reopen, the Petitioner submits new documentation relating to published material.

III. ANALYSIS

The regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires "[p]ublished 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."[3] In our decision, we determined that the Petitioner provided two screenshots from sprudge.com, one screenshot from icoffee.ee/fa, one screenshot from ghahvehdaan.ir, and two screenshots from iranlatteart.com reflecting published material about him relating to his field.[4] However, the Petitioner did not demonstrate that the websites were professional or major trade publications or other major media. In addition, the screenshots from icoff.ee/fa and ghahvehdaan.ir did not contain the required date and author of the material.[5]

On motion, the Petitioner offers website rankings for the following: sprudge.com (108,181 global, 24,959 United States), icoffee.ee/fa (170,354 global, 5,154 Iran), ghahvehdaan.ir (1,912 Iran, 227,269 United States), and iranlatteart.com (500,122 global, 13,230 Iran). The Petitioner, however, did not demonstrate the significance of the Internet rankings or show how such information reflects status of major media. Moreover, as it relates to sprudge.com, the Petitioner provides advertising documentation regarding the Sprudge Media Network claiming that the website received "2.4 million unique visitors" and "3.6 million pageviews" and "is the worldwide leader in coffee news and culture." Again, the Petitioner did not establish the relevance of the visitor and viewing

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[3] *See also* 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.

[4] We also determined that a third screenshot from sprudge.com, two screenshots from icoff.ee/fa, and a screenshot from bourseandbazaar.com did not reflect published material about the Petitioner regarding his work; rather they showed reports on barista competitions and Iran's café culture. Articles that are not about a petitioner do not meet this regulatory criterion. *See, e.g., Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at *1, *7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles regarding a show are not about the actor).

[5] *Id.*

numbers and how that reflects evidence of sprudge.com's standing as a major medium. Furthermore, USCIS need not rely on the self-promotional material of the publisher. *See Braga v. Poulos,* No. CV 06 5105 SJO (C. D. CA July 6, 2007) *aff'd* 2009 WL 604888 (9th Cir. 2009) (concluding that self-serving assertions on the cover of a magazine as to the magazine's status is not reliant evidence of major media).

In addition, the Petitioner lists the authors and dates of the screenshots from icoff.ee/fa and ghahvehdaan.ir, previously not included. However, the Petitioner did not submit documentation to support his assertions. For instance, the Petitioner did not present evidence from the websites confirming the authors and dates of the articles. Moreover, the Petitioner submits screenshots appearing to be an advertisement for icoffee.com that includes a marketing profile of him.[6] Further, the screenshots do not contain the required title, date, and author of the material. Regardless, for the reasons discussed above, the Petitioner did not establish that either website qualifies as a major medium.

Finally, the Petitioner submits a document entitled, " ." While the Petitioner claimed that the article appeared on the website of "King5 News Seattle," the evidence does not support his assertions. For example, the documentation does not contain any identifying characteristics from "King5 News Seattle" or an Internet address. Moreover, the Petitioner did not provide evidence demonstrating that the website is a major medium.

We note that 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 of his personal barista 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 and 8 C.F.R. § 204.5(h)(2).

IV. CONCLUSION

The Petitioner has not established that the evidence on motion demonstrate his eligibility for the benefit sought. 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.

[6] *See* USCIS Policy Memorandum PM-602-0005.1, *supra*, at 7 (indicating that marketing materials created for the purpose of selling products or promoting services are not generally considered to be published material).

ORDER: The motion to reopen is denied.

Cite as *Matter of M-M-M-*, ID# 2354183 (AAO Mar. 7, 2019)