U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF L-W-

DATE: MAY 30, 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, an educator, seeks classification as an individual of extraordinary ability. *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 shown that he only met one of the ten initial evidentiary criteria, of which he must meet at least three.

On appeal, the Petitioner submits additional evidence and contends that he meets three 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,
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> (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
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> (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). Alternatively, he or she must provide documentation that meets at least three of the ten categories of evidence listed at 8 C.F.R. § 204.5(h)(3)(i)-(x) (including items such as awards, memberships, and published material in certain media).

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 is an educator. As he has not received a major, internationally recognized award, the record must demonstrate that he satisfies at least three of the ten criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). In denying the petition, the Director found that the Petitioner met the criteria for published material under 8 C.F.R. § 204.5(h)(3)(iii) but not for judging, scholarly articles, or leading or critical role under 8 C.F.R. § 204.5(h)(3)(iv), (vi), and (viii), respectively. On appeal, the Petitioner maintains that he meets these criteria. Upon reviewing all of the evidence in the record, we find that the Petitioner has not established that he satisfies at least three criteria.[1]

> *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 Director held that the Petitioner met this criterion. We disagree. In response to the Director's request for evidence, the Petitioner asserted that the published material about him in the *New York Daily News*, the *New York Post*,[2] and the *Sing Tao Daily* newspapers established his eligibility under this criterion.

[1] Despite noting that the Petitioner intends to work as an educator, the Director held that he has not established in what profession he intends to work. We hereby withdraw that portion of the Director's decision.
[2] The record reflects that the material contained in the *New York Post* was published in Queens *Weekly*, a weekly regional insert.

First, the material in the New York Daily News and the New York Post have the appearance of being newspaper articles, but they are actually advertisements promoting the Petitioner's services.[3] Marketing materials created for the purpose of promoting an individual's services are not generally considered to be published material about the Petitioner.[4] Therefore, the Petitioner has not established that the material published in the New York Daily News and the New York Post satisfy this criterion.

Second, the record contains a partial translation of an article published in the Sing Tao Daily newspaper in [redacted] 2016, but this does not meet the regulatory requirements for translations. Any document in a foreign language must be accompanied by a full English language translation in which 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. 8 C.F.R. § 103.2(b)(3) (emphasis added). A comparison of this translation to the original newspaper article reflects that it is an incomplete translation as shown by the fact that the terms SAT and ACT, as stated in English in the original, appear more frequently than in the translation, and the length of the translation is much shorter than the original article. Accordingly, the record does not contain a full translation of this article from the Sing Tao Daily newspaper, and we cannot meaningfully consider it.[5]

Finally, we note that the record contains an article published in the Flushing Times about the Petitioner and his work in [redacted] While this article is about him and relates to his work in the field, he has not shown that this constitutes published material in professional or major trade publications or other major media. For example, he has not established who the intended audience is or provided evidence indicating that the circulation of this newspaper is high in relation to other publications.[6] Therefore, the Petitioner has not shown that this evidence, or the material discussed above, establishes that he meets this 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).

The Director held that the Petitioner had not met this criterion, concluding that his role as a judge in 2011 was an inherent duty of his occupation and that he had not established that his judging experience was consistent with sustained national or international acclaim. As an initial matter, we note that the Director erred by requiring the Petitioner to demonstrate that his judging was consistent with sustained national or international acclaim. The criterion at 8 C.F.R. § 204.5(h)(3)(iv) contains no such requirement to establish eligibility; rather, the analysis of sustained national or international acclaim is more relevant in the final merits determination that occurs if the Petitioner establishes that he meets at least three of the evidentiary criteria. See Kazarian, 596 F.3d at 1119-20.

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[3] The record reflects that the advertisement published in the [redacted], 2016, edition of the New York Daily News states that it is a work by [redacted], a self-described media solutions studio that provides digital marketing and branding. See https://www[redacted].com/about-us (accessed May 30, 2019).
[4] 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/sites/default/files/USCIS/Laws/Memoranda/i-140-evidence-pm-6002-005-1.pdf.
[5] The record contains other articles in Chinese, but these do not contain translations and cannot be considered.
[6] USCIS Policy Memorandum PM-602-0005.1, supra, at 7.

Here, we find that the Petitioner has established that he meets the requirements of this criterion. The Petitioner submitted evidence regarding his work as a judge for the [redacted] [redacted], including a letter from [redacted] the director of professional qualifications in the authentication department of the [redacted] [redacted] discusses the Petitioner's service as a judge of the applicants for the [redacted], and the record contains a copy of this license issued to successful applicants. [redacted] states that the Petitioner judged the [redacted] applicants on their fluency in speaking English, their ability to teach communication skills to children, their understanding of the Cambridge English for Children teaching material, and their ability to motivate children. This sufficiently demonstrates that the Petitioner has judged the work of others in his field. Therefore, the Petitioner has 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).

The Director held that the Petitioner had not established that he met this criterion, noting that he had not provided English translation certificates of the books he submitted that are written in Chinese. The Petitioner has submitted a translation of the cover of these books and the copyright page for several of them, but these do not constitute proper certifications to meet the regulatory requirements. Any document in a foreign language must be accompanied by a full English language translation in which 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. 8 C.F.R. § 103.2(b)(3). The Petitioner states that half of these books are in Chinese, which is the author's interpretation of the English test questions, and he claims that this should be sufficient. However, without a properly certified English language translation of this documentation we cannot meaningfully determine whether the translated material is accurate and thus supports his claims. The Petitioner states that he did attach English translations of the chapters, but we cannot determine which chapters he references.

The Petitioner states that he meets this requirement based on one of his articles published in the *New York Daily News* and another article published in the *World Journal*. We note that the *New York Daily News* article, dated [redacted], 2017, is contained within one of the advertisements for the Petitioner's test preparation materials, as discussed above. The heading states, "[redacted] [redacted]" with a subheading stating, "[redacted] [redacted]" In the introduction to the Petitioner's discussion about his "view on distinctions between Chinese and American means of education," he states that this article is from his thesis entitled, "[redacted] [redacted]" It is unclear whether this represents his entire thesis. The Petitioner has not submitted a copy of his thesis, nor has he claimed it appeared elsewhere in a qualifying publication. The regulation at 8 C.F.R. § 204.5(h)(3)(vi) requires evidence of a petitioner's authorship of scholarly articles that are published in professional or major trade publications or other major media, and we interpret this to mean that the entire article must be published in such publications. Thus, the Petitioner has not established that the excerpt of his thesis meets the requirements of this criterion. Furthermore, he has not shown that the material contained within the advertisement is sufficient to meet the requirements of this criterion. We note that in the academic arena, scholarly articles report on original

research, experimentation, or philosophical discourse, and generally have footnotes, endnotes, or a bibliography, aspects which are lacking in the New York Daily News material.[7] The Petitioner has not established how this material meets these characteristics to constitute scholarly articles. Therefore, he has not established that this material in the New York Daily News meets the requirements of this criterion.

The Petitioner has not submitted a complete translation of the article published in the World Journal, as required by the regulations. See 8 C.F.R. § 103.2(b)(3) (stating that any document in a foreign language must be accompanied by a full English language translation). However, even if this translation issue were resolved, we note that this article lacks the indicia of a scholarly article, as it appears to provide guidance to students preparing for the SAT examination.[8] Here, the Petitioner has not established that the World Journal article can be categorized as scholarly in keeping with the regulation. Therefore, for the reasons discussed above, he has not established that he 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).

For a leading role, the evidence must establish that the petitioner is or was a leader.[9] If a critical role, the evidence must establish that the petitioner has contributed in a way that is of significant importance to the outcome of the organization or establishment's activities. A supporting role may be considered "critical" if the petitioner's performance in the role is or was important in that way. It is not the title of the petitioner's role, but rather his or her performance in the role that determines whether the role is or was critical.[10]

On appeal, the Petitioner states that he meets this criterion due to his role as principal of the [redacted] which the record reflects is within the [redacted] and as founder of the [redacted]. The record contains a letter from [redacted] the founder and president of the [redacted], attesting to the Petitioner's tenure with this organization from 1998 to 2007. Specifically, [redacted] states that the Petitioner served as a key note instructor giving lectures in school auditoriums at "the [redacted]" from 1998 to 2002. [redacted] adds that the Petitioner was later promoted to the position of principal for the [redacted] where he served from 2005 to 2007.

While the Petitioner has established that his roles as principal of the [redacted] and as the founder of the [redacted] constitute leading roles, the record does not demonstrate that these schools have a distinguished reputation, which is "marked by eminence, distinction, or excellence."[11] While [redacted] states that the [redacted] was "the first Chinese educational institution to enter the [redacted] in the United States," he has not explained how the listing of the parent company relates to the reputation of the school at which the Petitioner worked. Furthermore,

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[7] USCIS Policy Memorandum PM-602-0005.1, supra, at 9.
[8] Id.
[9] USCIS Policy Memorandum PM-602-0005.1, supra, at 10.
[10] Id.
[11] USCIS Policy Memorandum PM-602-0005.1, supra, at 10-11.

the Petitioner has not submitted other evidence demonstrating that the [ ] has a distinguished reputation.

Regarding the reputation of the [ ] the Petitioner states that its achievements have been "frequently featured in media," but he has not identified what coverage he is referring to. The record contains a copy of an article displaying a photograph of school children at www.kaobitong.com, but this is in a foreign language and not accompanied by a certified translation, as required.[12] We note that the record contains the results of a 2012 [ ] Math Competition [ ] indicating that a team from the [ ] competed in this event, but the record does not reflect that this is indicative of the school's eminence, distinction, or excellence.[13] The [ ] website provides the results from the competition and lists a team from the [ ] as ranked sixth in the Division B results, but the Petitioner has not shown how this team's performances are an indication of the school's distinguished reputation. Therefore, for the reasons discussed above, the Petitioner has not established that he meets the requirements of this criterion.

III. CONCLUSION

The Petitioner is not eligible because he has not submitted the required initial evidence of either a qualifying one-time achievement, or documents that meet at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x). Thus, we do not need to fully address the totality of the materials in a final merits determination. *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 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 L-W-*, ID# 2688833 (AAO May 30, 2019)

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[12] Any document in a foreign language must be accompanied by a full English language translation in which 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. 8 C.F.R. § 103.2(b)(3).
[13] USCIS Policy Memorandum PM-602-0005.1, *supra*, at 10-11.