U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 6511837

Date: APR. 29, 2020

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Extraordinary Ability)

The Petitioner, a mastering engineer, seeks classification as an alien 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 initially denied the petition and subsequently affirmed his decision on motion, concluding that the Petitioner had not satisfied any of the initial evidentiary criteria, of which he must meet at least three.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 203(b)(1) 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 a multi-part analysis. First, a petitioner can demonstrate sustained

acclaim and the recognition of his or her achievements in the field through 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 sufficient qualifying 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 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).

II. ANALYSIS

The Petitioner indicates employment as a mastering engineer at [redacted] in [redacted] California. 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).

The Director determined that the Petitioner did not fulfill any of the initial evidentiary criteria. On appeal, the Petitioner asserts that he meets five criteria. After reviewing all of the evidence in the record, we conclude that the Petitioner does not establish that he satisfies the requirements of at least three criteria.

A. Evidentiary 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).

The Petitioner argues that he "received a certification at the [redacted] Grammy Awards," and "any award from the Grammy Awards should speak for itself." In order to fulfill this criterion, the Petitioner must demonstrate that he received the prizes or awards, and they are nationally or internationally recognized for excellence in the field of endeavor.[1]

The record reflects that the Petitioner submitted a certificate from the National Academy of Recording Arts and Sciences "in recognition of [his] participation as [redacted] on the GRAMMY® Award-nominated recording [redacted] in the category [redacted] Music Album." The Petitioner, however, did not provide any further documentation demonstrating that a certificate acknowledging his participation on a Grammy nominated recording is tantamount to a lesser nationally or internationally recognized prize or award for excellence in the field consistent with this regulatory criterion. Moreover, the Petitioner did not establish that he received a Grammy rather than participating on a nominated recording. Here, the Petitioner did not show that he garnered a prize or award from the National Academy of Recording Arts and Sciences.

[1] *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* 6 (Dec. 22, 2010), https://www.uscis.gov/policymanual/HTML/PolicyManual.html.

Accordingly, the Petitioner did not establish 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).

In order to satisfy this criterion, the Petitioner must demonstrate published material about him in professional or major trade publications or other major media, as well as the title, date, and author of the material.[2] The record reflects that the Petitioner submitted a book entitled, [redacted] in which the author interviewed the Petitioner covering approximately six pages. However, the Petitioner did not include the required date of the material. Furthermore, the Petitioner provided an article from highwiredaze.com dated after the filing of the initial petition. The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of filing and continuing through adjudication. *See* 8 C.F.R. § 103.2(b)(1). Similarly, he offered a screenshot from rocknrollindustries.com, highlighting "Rock N Roll Industries [redacted]" with a date occurring after the initial filing of his petition. Furthermore, he did not include the accompanying article establishing published material about him.[3]

Notwithstanding the above, the Petitioner provided articles posted on prosoundnetwork.com and musicconnection.com showing published material about him relating to his work.[4] However, the Petitioner did not establish that the websites qualify as professional or major trade publications or other major media.[5] As it relates to prosoundnetwork.com, the Petitioner submitted documentation regarding "Future plc," claiming that "ProSound News is a subsidiary of Future plc, an international media group and leading digital publisher." The evidence, though, makes no mention of prosoundnetwork.com. In addition, the issue here is not the reputation of the publisher but whether the website garners major medium status.[6]

Moreover, regarding musiconnection.com, the Petitioner submitted a letter from [redacted] for *Music Connection*, who claimed that "Music Connection, via its monthly print publication, daily website, podcast and Weekly Bulletin, is a well-known information resource for recording artists, songwriters, producers and engineers whose expertise is in the creation of great music." However, the Petitioner did not submit independent, probative evidence to support the

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[2] *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.

[3] In his cover letter in response to the Director's request for evidence, the Petitioner claimed that "Rock N Roll Industries Magazine has an interview with [him] called [redacted]."

[4] The Petitioner did not include the authors for two of the four articles from prosoundnetwork.com.

[5] Although the Petitioner claimed published material in *ProsoundNews* and *Music Connection*, as well as *HighWire Daze* and *Rock N Roll Industries Magazine*, the Petitioner submitted screenshots showing posted articles on their websites rather than printed articles in their magazines.

[6] *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 7 (indicating that evidence of published material in professional or major trade publications or in other major media publications should establish that the circulation (on-line or in print) is high compared to other circulation statistics).

publisher's claims. 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 a major medium). Here, the Petitioner did not offer objective evidence, such as website traffic figures, demonstrating the website's standing as a major medium.[7]

For these reasons, the Petitioner did not show 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 regulation at 8 C.F.R. § 204.5(h)(3)(vi) requires his "authorship of scholarly articles in the field, in professional or major trade publications or other major media."[8] The Petitioner claims eligibility for this criterion because his "professional writing in his field has been featured in three books on mastering and audio engineering." The record reflects that he submitted: 1) a page from the book, [redacted], authored by [redacted]; 2) a page from the book, [redacted], authored by [redacted]; and 3) a screenshot from an unidentified website advertising the book, [redacted], authored by [redacted].

At the outset, the Petitioner did not demonstrate how books authored by other individuals qualify as "the alien's authorship of scholarly articles." Regardless, for fields other than in the academic arena, a scholarly article should be written for learned persons in that field.[9] Moreover, "learned," is defined as "having or demonstrating profound knowledge or scholarship," and learned persons include all persons having profound knowledge of a field.[10] Here, the Petitioner did not establish that any of the materials represent scholarly articles.

As it relates to [redacted], the book cover indicates that it gives "advice from over 100 industry professionals." Regarding the Petitioner's contribution, the Petitioner provided his thoughts and advice on "[redacted]." Here, the Petitioner did not show how offering his advice demonstrates that he wrote the page for learned persons in the field who have profound knowledge or scholarship.

Regarding [redacted], the Petitioner provided a three-sentence quote regarding the author's topic on "[redacted]." Here, the Petitioner did not establish that he authored the material; rather the book's author supported the section by quoting the Petitioner. Again, the Petitioner did not demonstrate that the material was written for learned persons. Instead, the Petitioner presented documentation advertising the manual "for consideration for course adoption," signifying that it is intended for students or individuals with lesser knowledge or scholarship than seasoned or experienced individuals.

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[7] In addition, the Petitioner did not establish that *The Business of Audio Engineering*, highwiredaze.com, and rocknrollindustries.com qualify as professional or major trade publications or other major media.

[8] *See* USCIS Policy Memorandum PM-602-0005.1, *supra*, at 9.

[9] *See* USCIS Policy Memorandum PM-602-0005.1, *supra*, at 9.

[10] *Id.*

As it pertains to [redacted] the Petitioner did not establish what he contributed to the book. He did not, for example, provide any pages, sections, or chapters reflecting his written work. As such, the Petitioner did not demonstrate that he authored a scholarly article. Furthermore, the unidentified screenshot indicated that "[s]ome of the professionals that appear, exclusively, exposing their respective visions and experiences in the professional audio sector."[11] Once again, the Petitioner did not show whether he authored the material or that the author quoted him. Moreover, the Petitioner did not establish that the material was written for learned persons.

Finally, while he submitted evidence regarding the publishers of the books, the Petitioner did not demonstrate that any of books are professional or major trade publications or other major media. The Petitioner, for instance, did not provide statistics or other evidence establishing the major standing of the books.[12]

Accordingly, the Petitioner did not establish that he fulfills 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. *See La. Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, at *2 (E.D. La. 2000).

III. CONCLUSION

We find that the Petitioner does not satisfy the criteria relating to awards, published material, and scholarly articles. Although he claims eligibility for two additional criteria on appeal, relating to leading or critical role at 8 C.F.R. § 204.5(h)(3)(viii) and commercial successes at 8 C.F.R. § 204.5(3)(3)(x), we need not reach these additional grounds. As the Petitioner cannot fulfill the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3), we reserve these issues.[13] Accordingly, 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,

[11] The Petitioner's name is listed as one of the professionals included in the book.

[12] *See* USCIS Policy Memorandum PM-602-0005.1, *supra*, at 9 (providing that evidence of professional or major trade publications or in other major media publications should establish that the circulation (on-line or in print) is high compared to other circulation statistics and the intended audience).

[13] *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach).

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 of his work 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). Although the Petitioner has worked with accomplished musicians, the record does not contain sufficient evidence establishing that he is among the upper echelon in his field.

For the reasons discussed above, the Petitioner has not demonstrated his eligibility 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.

ORDER: The appeal is dismissed.