U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 7864739

Date: AUG. 25, 2020

Appeal of Nebraska Service Center Decision

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

The Petitioner, an actor, 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 denied the petition, 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,
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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 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 claims to have performed as an actor in movies and television in Russia. 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 determined that the Petitioner did not fulfill any of the initial evidentiary criteria. On appeal, the Petitioner argues that he meets five criteria. After reviewing all of the evidence in the record, we conclude that the record does not support a finding that the Petitioner satisfies 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)

In order to fulfill this criterion, a 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] Relevant considerations regarding whether the basis for granting the prizes or awards was excellence in the field include, but are not limited to, the criteria used to grant the prizes or awards, the national or international significance of the prizes or awards in the field, and the number of awardees or prize recipients as well as any limitations on competitors.[2]

The Petitioner did not initially indicate eligibility for this criterion. However, in response to the Director's request for evidence (RFE), the Petitioner asserted that "many projects that [he] played major roles in were awarded prestigious nationally recognized awards" and listed awards received by a television show, movie, and sitcom. Moreover, the Petitioner claimed that he garnered two awards for his acting achievements: "Diploma from the Russian theatre festival named after [redacted] 2011" and "Diploma of [redacted] theatre festival named after [redacted] 2010."

On appeal, the Petitioner makes the identical assertions that he made in response to the RFE without identifying specifically any erroneous conclusion of law or statement of fact for the appeal, or even referencing the Director's decision on this issue. Furthermore, while he states that "[b]ased on the

[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.
[2] Id.

evidence submitted, [he] has satisfied the requirements of 8 CFR § 204.5(h)(3)(i)," the Petitioner does not identify the evidence.

Moreover, the record does not contain documentation supporting the Petitioner's claims of any of the television shows, movies, and sitcoms receiving any prizes or awards, let alone nationally or internationally recognized prizes or awards for excellence. Regardless, even if these shows and movies garnered the awards, the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires the "alien's receipt" rather than a show, movie, or sitcom's receipt.[3] In addition, the record does not reflect evidence to corroborate his assertions regarding his receipt of diplomas from the theatre festivals. Moreover, the Petitioner did not submit documentation, nor did he demonstrate, the national or international recognition of the diplomas as prizes or awards for excellence in the field.

For the reasons discussed above, 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 fulfill 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.[4] Again, the Petitioner did not initially claim eligibility for this criterion and makes the same arguments on appeal that he claimed in response to the Director's RFE, without identifying specifically any erroneous conclusion of law or statement of fact for the appeal, or even referencing the Director's decision on this issue. Furthermore, the Petitioner again indicates "[b]ased on the evidence submitted," but does not identify the evidence.

Nevertheless, the record contains snapshots of website pages claiming to be from kinopoisk.ru, kino-teatr.ru, ivi.tv, ruskino.ru, lifeactor.ru, imdb.com, vashdosug.ru, kinomania.ru, and etvnet.com that show various biography data, such as name, date of birth, and film credits. The snapshots, however, do discuss the Petitioner regarding his work. As such, the Petitioner did not establish that the evidence reflects published material about him relating to his work consistent with the regulation at 8 C.F.R. § 204.5(h)(3)(iii).

Moreover, the Petitioner did not include the required title, date, and author of the material. Furthermore, although he attached "Attendance statistics" to each snapshot, the Petitioner did not identify the source of the claimed website views and visitors, nor did he demonstrate the significance of the figures, signifying professional or major trade publications or other major media.[5]

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[3] See USCIS Policy Memorandum PM 602-0005.1, supra, at 6 (indicating that the description of this type of evidence in the regulation provides that the focus should be on the alien's receipt of the awards or prizes, as opposed to his or her employer's receipt of the awards or prizes).

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

[5] 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).

Accordingly, the Petitioner did not show that he satisfies 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 specialization for which classification is sought. 8 C.F.R. § 204.5(h)(3)(iv)

This regulatory criterion requires an alien to show that he has acted as a judge of the work of others in the same or an allied field of specialization.[6] Once again, the Petitioner did not initially claim eligibility for this criterion and makes the same arguments on appeal that he claimed in response to the Director's RFE, without identifying specifically any erroneously conclusion of law or statement of fact for the appeal, or even referencing the Director's decision on this issue. Furthermore, the Petitioner again indicates "[b]ased on the evidence submitted," but does not identify the evidence.

Nonetheless, the record reflects a letter from [redacted] general producer, who indicated that the Petitioner worked as "casting director" and "conducted castings and was a member of jury committee of creative group and evaluated actor skills of potential candidates for participation projects." The letter, however, makes broad statements without providing probative, detailed, and specific information, such as identifying the actor's names, project titles, and dates. Without further information or corroborating documentation, the Petitioner did not demonstrate that the letter is sufficient to establish that he judged the work of others consistent with this regulatory criterion.

As such, the Petitioner did not show that he fulfills this criterion.

III. CONCLUSION

We find that the Petitioner does not satisfy any of the criteria regarding to awards, published material, and judging. Although he claims eligibility for two additional criteria on appeal, relating to original contributions of major significance at 8 C.F.R. § 204.5(h)(3)(v) and leading or critical role at 8 C.F.R. § 204.5(h)(3)(viii), we need not reach these additional grounds.[7] 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.[8] 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, 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

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

[7] The Petitioner's claims on appeal mirror his same claims he made in response to the Director's RFE and do not identify specifically any erroneous conclusion of law or statement of fact for the appeal, or even reference the Director's decision for these criteria.

[8] 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).

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 he participated in acting projects, the record does not contain sufficient evidence establishing that the Petitioner 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.[9] 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.

[9] The Director indicated in his decision that the RFE informed the Petitioner that he did not demonstrate that he would substantially benefit prospectively the United States. Although he referenced the law and discussed the legislative history, the Director did not make a final determination in his decision, nor did he explain why the Petitioner did not establish eligibility for this requirement. Notwithstanding, as the Petitioner has not established his extraordinary ability under section 203(b)(1)(A)(i) of the Act, we need not consider whether his entrance will substantially benefit prospectively the United States under section 203(b)(1)(A)(iii) of the Act, and we reserve this issue.