U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 7880553

Date: DEC, 16, 2020

Appeal of Nebraska Service Center Decision

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

The Petitioner, a jeweler, 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 satisfied only one of the ten initial evidentiary criteria, of which he must meet at least three. In addition, the Director determined that the Petitioner did not establish that he would continue to work in his area of extraordinary ability and that he would substantially benefit prospectively the United States.

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)(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 a multi-part analysis. First, a petitioner can demonstrate 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 criteria 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). (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).

II. ANALYSIS

The Petitioner asserts to have worked in the field of [redacted] traditional jewelry making. Because the Petitioner has not indicated or established that he has received a major, internationally recognized award at 8 C.F.R. § 204.5(h)(3), 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 fulfilled only one criterion, awards at 8 C.F.R. § 204.5(h)(3)(i). However, for the reasons discussed below, we do not concur with the Director's decision relating to this criterion. On appeal, the Petitioner maintains that he meets five additional criteria. After reviewing all of the evidence in the record, the record does not reflect 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).

The Director concluded that the Petitioner satisfied this criterion without identifying the qualifying award(s) and explaining his determination. 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] 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]

[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.

Because the record does not reflect that the Petitioner established eligibility under the regulation at 8 C.F.R. § 204.5(h)(3)(i), we will withdraw the decision of the Director for this criterion.

At the initial filing, the Petitioner indicated that "[i]n 2012, [he] was awarded [the] UNESCO [United Nations Educational, Scientific and Cultural Organization] Award of Excellence for Handicrafts." (emphasis added). However, he submitted a certificate for "The UNESCO Crafts Prize 2016 for the Asia-Pacific Region . . . on the occasion of the [redacted] Festival." (emphasis added). In response to the director's request for evidence (RFE), he claimed that "[i]n 2016, [he] was awarded [the] UNESCO Award of Excellence for Handicrafts." The record does not support the Petitioner's initial claim of receiving a 2012 UNESCO award.

In addition, he provided an application kit by the World Crafts Council (WCC) for the "Award of Excellence for Handicrafts" stating that "[t]he Award of Excellence for Handicrafts, was established by UNESCO in 2001. Owing to its success, the programme was expanded worldwide until 2012. WCC since 2014 is continuing the programme under patronage of UNESCO within Asia Pacific Region."[3] However, the certificate indicated above is for "The UNESCO Crafts Prize 2016 for the Asia-Pacific Region." The Petitioner did not demonstrate how "The UNESCO Crafts Prize" (certificate) relates to the "Award for Excellence for Handicrafts" (application kit). Further, the application kit indicates:

> The WCC "Award of Excellence for Handicrafts" aims to encourage artisans to produce handicrafts using traditional skills, patterns and themes in an innovative way, in order to ensure the continuity and sustainability of these traditions and skills. It is WCC's flagship programme for supporting craft producers.
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> . . . .
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> Each product recognized with the WCC Award is given a certificate. The certificate can be used as a promotional tool (for a specified product or a product line) to attest the quality and authenticity of a product.

The Petitioner did not demonstrate how the application kit reflects the national or international recognition of the "Award of Excellence for Handicrafts" in the field. Rather, according to the application kit, the award's purpose is to encourage artisans to produce handicrafts and to use as a promotional tool. Here, the Petitioner did not establish the national or international significance of the award in the field beyond WCC. Moreover, the Petitioner did not show that the issuance of numerous awards is indicative of an award "for excellence in the field of endeavor" consistent with this regulatory criterion. For instance, in 2012, "[t]he UNESCO Award of Excellence for Handicrafts

[3] The record also contains screenshots from WCC's website regarding the Asian Pacific Region program, rules and regulations, and contact information. In addition, the screenshots state that "[t]he main objectives of [WCC] is to ensure the status in each country of the Asia Pacific Region as a vital part of the cultural scenario by developing and strengthening it," including "[t]o promote, develop, maintain, strengthen and ensure status of crafts as an important medium of artistic expression."

has been granted to 80 craft products from a total 189 entries in the South and South-East Asian subregions."[4] In this case, almost half of all entries received the "Award of Excellence."

For the reasons discussed above, the Petitioner did not demonstrate that he received nationally or internationally recognized prizes or awards for excellence in his field of endeavor. As such, we withdraw the decision of the Director for this 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 argues that he "was accepted to [redacted] Association in 2011, based on his outstanding achievements in the field of traditional [redacted] jewelry making as judged by nationally or internationally recognized experts in the field of traditional [redacted] jewelry making." In order to satisfy this criterion, the Petitioner must show that membership in the association is based on being judged by recognized national or international experts as having outstanding achievements in the field for which classification is sought.[5]

The record reflects that the Petitioner initially presented a membership certificate from the "Administration of [redacted] Association of Craftsmen and Artists of the [redacted]." In addition, the Petitioner provided a letter from [redacted] chairman of the [redacted] Regional Department of [redacted] who claimed that this "organization requires outstanding achievements of its members, as judged by nationally or internationally recognized experts," and "[t]he approach for [the Petitioner's] level of full association membership, were demonstration of outstanding achievements as judged by nationally recognized experts in the field of [redacted] traditional jewelry making sphere." Here, [redacted] repeats the language of the regulations without pointing to any governing authority establishing that membership with [redacted] requires outstanding achievements, as judged by recognized national or international experts. See 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); Avyr Associates, Inc. v. Meissner, 1997 WL 188942 at *5 (S.D.N.Y.). Further, the Petitioner did not submit any supporting evidence, such as the bylaws or other documentation, showing [redacted]s membership requirements, to corroborate [redacted]s assertions.

Moreover, in response to the Director's RFE, he offered two letters from [redacted] general director of [redacted] who confirmed the Petitioner's membership and highlighted his jewelry work. However, [redacted] did not indicate the membership requirements for [redacted] nor did he demonstrate that recognized national or international experts judge the outstanding achievements for membership with the association.

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[4] See https://culture360.asef.org/news-events/unesco-award-excellence-handicrafts-80-asian-craft-products/, accessed on October 19, 2020.

[5] See USCIS Policy Memorandum PM 602-0005.1, supra, at 6 (providing an example of admission to membership in the National Academy of Sciences as a Foreign Associate that requires individuals to be nominated by an academy member, and membership is ultimately granted based upon recognition of the individual's distinguished achievements in original research).

As such, the Petitioner did not show 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.[6] The record reflects that the Petitioner submitted three articles from The Bukharian Times, Zamon Times, and Buxoroyi Sharif. However, the Petitioner did not establish that any of the publications are professional or major trade or other major media. The Petitioner offered a letter from the [redacted] of The Bukharian Times stating that "[t]he newspaper . . . is a weekly social and political newspaper of the community of Bukharian Jews of America," and "[t]he circulation . . . is 12 thousand printed copies." In addition, he provided a media kit from The Bukharian Times indicating that it "is the only free weekly Russian newspaper in New York City" with a quantity of 12,000 copies. Regarding Buxoroyi Sharif, the Petitioner presented a letter from the [redacted] who asserted that it "is a weekly social – political newspaper," and "[t]he newspaper is published every Thursday with around 500 print issues containing about 4-6 pages per each." Here, the Petitioner did not provide any independent, objective evidence showing the newspapers' standings as major media. 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 a magazine as to the magazine's status is not reliant evidence of a major medium). Further, the Petitioner did not show the significance of the "12,000" and "500" circulation figures or explain how such data reflects status as major media.[7] Moreover, the Petitioner did not offer evidence relating to the position of the Zamon Times.

For these reasons, the Petitioner did not demonstrate 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).

The Petitioner contends that he "has made a contribution of major significance to this field by virtue of his ability to preserve and creatively develop the unique artistic heritage of ancient [redacted] jewelers." In order to meet the regulation at 8 C.F.R. § 204.5(h)(3)(v), a petitioner must establish that not only has he made original contributions but that they have been of major significance in the field.[8] For example, a petitioner may show that the contributions have been widely implemented throughout the field, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance in the field.

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

[7] 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).

[8] See USCIS Policy Memorandum PM 602-0005.1, supra, at 8-9 (finding that although funded and published work may be "original," this fact alone is not sufficient to establish that the work is of major significance).

The record reflects that the Petitioner claimed eligibility for this criterion based on three recommendation letters that opined on his abilities, skills, and personal traits. For instance, "[the Petitioner's] specialization is mainly connected with the perception of exquisite patterns of modern and ancient ornaments of jewels, which represent the whole amenity and the authenticity of this challenging art" [redacted], "[the Petitioner] is one of a few on top masters who are able to handle long-term duties along with undisputable aspiration and passion in his craft" [redacted], and "[the Petitioner] does not stop in his work, he is always in search, in work, and he comes to the right decision through thousands of sketches of the future product" [redacted]. However, having a diverse, unique, or special skill set is not a contribution of major significance in-and-of-itself. Further, the record must be supported by evidence that the Petitioner has already used those skills and talents to impact the field at a significant level, which the letters do not show. In addition, he presented a letter from [redacted] who "thank[ed] [the Petitioner] for providing exceptional service to [the Academy of Arts of [redacted]," and "[the Petitioner's] personal aspiration to make our exhibition successful constantly exceeds our expectations." [redacted] does not explain how the Petitioner's contributions to the academy impacted the overall field rather than limited to the academy's exhibition.[9]

Here, the Petitioner's letters do not contain specific, detailed information identifying his original contributions and explaining the unusual influence his artwork has had on the overall field. Letters that specifically articulate how a petitioner's contributions are of major significance to the field and its impact on subsequent work add value.[10] On the other hand, letters that lack specifics and use hyperbolic language do not add value, and are not considered to be probative evidence that may form the basis for meeting this criterion.[11] Moreover, USCIS need not accept primarily conclusory statements. 1756, Inc. v. The U.S. Att'y Gen., 745 F. Supp. 9, 15 (D.C. Dist. 1990).

For the reasons discussed above, considered both individually and collectively, the Petitioner has not shown that he has made original contributions of major significance in the field.

III. CONCLUSION

The Petitioner did not demonstrate that he satisfies the criteria relating to awards, memberships, published material, and original contributions. Although the Petitioner claims eligibility for two additional criteria on appeal, relating to scholarly articles at 8 C.F.R. § 204.5(h)(3)(vi) and display at 8 C.F.R. § 204.5(3)(3)(vii), 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.[12] 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

[9] See USCIS Policy Memorandum PM 602-0005.1, supra, at 8-9; see also 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).

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

[11] Id. at 9. See also Kazarian, 580 F.3d at 1036, aff'd in part 596 F.3d at 1115 (holding that letters that repeat the regulatory language but do not explain how an individual's contributions have already influenced the field are insufficient to establish original contributions of major significance in the field).

[12] 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); see also Matter of L-A-C-, 26 I&N Dec. 516, n.7 (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

aggregate, concluding that it does not support a conclusion 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 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 claims experience as a jeweler, 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.[13] 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.

[13] As the Petitioner has not established his extraordinary ability under section 203(b)(1)(A)(i) of the Act, we need not consider whether he will continue to work in his area of extraordinary ability under section 203(b)(1)(A)(ii) of the Act and whether his entrance will substantially benefit prospectively the United States under section 203(b)(1)(A)(iii) of the Act. Accordingly, we reserve these issues. See INS, 429 U.S. at 25-26; see also 26 I&N Dec. at 516, n.7.