U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 4655459

Date: FEB. 4, 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 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 petition, concluding that the Petitioner had satisfied only one of the ten initial evidentiary criteria for this classification, of which he must meet at least three.

On appeal, the Petitioner maintains that he meets two additional criteria and is otherwise qualified for the benefit sought.

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 is an actor who has worked in theater, film, television, and commercial projects in the United States and in his native South Africa. The record reflects that he completed a two-year associate's degree in acting at the American Academy of Dramatic Arts Conservatory in New York.

A. Evidentiary Criteria

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 found that the Petitioner met only one of the evidentiary criteria, relating to published material about him in major trade publications or other major media. *See* 8 C.F.R. § 204.5(h)(3)(iii). We agree that the Petitioner meets this criterion based on an article titled [redacted]" published in *The Star*, as the article is about him and his work, and is accompanied by evidence establishing that this publication qualifies as major media in South Africa.

On appeal, the Petitioner asserts that he also meets the evidentiary criteria relating to original contributions of major significance in his field and performing in a leading or critical role for organizations that have a distinguished reputation. After reviewing all of the evidence in the record, we find that the Petitioner has not established that he meets three criteria.

> *Evidence of the individual'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)

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.[1] For example, a petitioner may show that the contributions have been widely implemented throughout 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* 8-9 (Dec. 22, 2010), https://www.uscis.gov/policymanual/HTML/PolicyManual.html.

field, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance in the field.

The record reflects that the Petitioner has provided more than ten letters from persons in his industry who confirm his participation in projects and praise his appearance, character, talent and artistic abilities.[2] For instance, [redacted] of [redacted] Artists Agency states that she was impressed by the Petitioner's acting footage and "his ethnically ambiguous look." She explains that "his choices, skillset and mysterious energy make him an extremely likable and unique actor" and states that his "exotic appearance is exactly what the entertainment world craves right now and is so rare to find." [redacted] a talent manager and producer for [redacted] states that the Petitioner "has all of the unique and highly original attributes that the business is constantly looking for" and states that "the industry needs more international artists from unique locations to bring something new and eye catching." Director [redacted] indicates that the Petitioner "possesses a range of depth and unique choices that blend well with his primal sense of awareness," praises him for being approachable, versatile, and willing to take direction, and notes that "being a native of South African [*sic*] he possesses cultural and rare life experiences that help define and mold his characters." Actor and acting coach [redacted] noted that "being raised in a completely different culture and environment from birth allows [the Petitioner] to approaching acting from an angle that no American can simply based on the fact that he resonates a different energy and history."

However, the Petitioner did not establish that having a diverse, unique, or special skillset, particular cultural background, or exotic look is an original contribution of major significance in-and-of-itself. Rather, 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 he has not shown. Moreover, the letters do not comment on the Petitioner's impact beyond the limited projects in which he has performed or participated.[3]

Here, the Petitioner's letters did not contain specific, detailed information identifying his original contributions and explaining the unusual influence his work 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. 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.[4] 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).

On appeal, the Petitioner submits four additional letters, asserting that this new evidence will more clearly identify his original contributions and "explain how the contributions have influenced the field of acting as a whole." In a new letter, [redacted] who previously explained that the Petitioner assists him with coaching his clients, states that he has been able to expand his clientele "to a more international demographic" and indicates that he has expanded his teaching curriculum "by merging

[2] Although we address a sampling of the letters here, we have reviewed and considered each letter submitted in support of the petition.
[3] *See Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013) (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).
[4] *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8-9.

[the Petitioner's] ideas with my unique style of teaching – this is now known as 'action vocabulary.'"[5] further explains that he incorporated the Petitioner's "foreign" gestures and body language into his teaching curriculum and passed the method on to his students, which has "resulted in more of my clients having success in their auditioning process around the world." He opines that the Petitioner's contributions to his teaching method have "diversified America's talent pool" by giving them the tools to audition for characters who are not American in origin.

The Petitioner also submits letters from actors and who both indicate that they have received training from the Petitioner in the acting techniques described by states that he joined 's acting classes to learn the "action vocabulary" technique, which he describes as "very unique and effective" and he states that he is further ahead in his career than peers who have not learned the technique. states he "was able to broaden [his] character development," that he is now able to portray his characters "in a worldly and distinguished manner," and that the training has resulted in "audiences around the world being exposed to a new hybrid method which incorporated the professional training of an American acting school and the vast experience of a born and raised South African." Finally, credits the Petitioner with facilitating "the growth of the field of acting both artistically and culturally."

While indicates that the Petitioner has contributed some techniques to his own teaching method, his letter does not reflect how this contribution had an impact in the field beyond influencing and some of his own students. The record does not reflect that the Petitioner has "diversified America's talent pool" to the extent that he has developed techniques that have been widely implemented in the acting field or have remarkably impacted the field. Similarly, while both and believe their careers have benefited from working with the Petitioner, the record does not support a finding that the Petitioner's teachings have majorly influenced the field or greatly contributed to its artistic and cultural growth as claimed.

Finally, the Petitioner has provided a letter from CEO and founder of an organization founded to assist performing artists in states that the Petitioner, as an acting coach, "has directly contributed to the growth of our artists' acting development by training them to truthfully portray American characters." explains that the Petitioner uses "language transitioning" and "physicality transitioning" techniques he learned in acting school, along with his personal experience, to develop and hone a "new product" which "essentially helped international artists to quickly and effectively adapt to the American film and television market." While 's letter suggest that the Petitioner's training and personal experience have made him well-equipped to assist his fellow actors in making the transition to the United States, he does not explain how the Petitioner has made an original contribution of major significance that has impacted the broader field of acting.

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.

[5] explains that "action vocabulary" focuses on "using gestures and mannerisms rather than words to portray an emotion within the parameters of the scene."

Evidence that the individual 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).

As it relates to a leading role, the evidence must establish that a petitioner is or was a leader. A title, with appropriate matching duties, can help to establish if a role is or was, in fact, leading. Regarding a critical role, the evidence must demonstrate that a petitioner has contributed in a way that is of significant importance to the outcome of the organizations or establishment's activities. It is not the title of a petitioner's role, but rather the performance in the role that determines whether the role is or was critical. [6]

With respect to this criterion, the Petitioner asserts on appeal that the letters from [redacted] and [redacted] demonstrate that "the Petitioner's roles as an actor have been leading/critical to the operation of organizations or establishments, beyond what most actors can claim." Previously, the Petitioner also claimed to meet this criterion based on his work with [redacted] [redacted], and references a previously submitted letter from [redacted] a senior lead instructor for this establishment.

[redacted] has confirmed that the Beneficiary has acted as his assistant acting coach and the record contains a screenshot from [redacted] indicating that [redacted] provides services as a private coach and mentor. While [redacted] indicates that the Petitioner has contributed to the development of acting methods that he teaches to his students, the record does not establish that he has played a leading role in [redacted]'s coaching endeavors or provide sufficient evidence that the Petitioner works in a critical capacity that is of significant importance to the success of the coaching business. Further, the Petitioner did not submit evidence establishing that [redacted]'s coaching business is an organization or establishment that enjoys a distinguished reputation, as the evidence is limited to [redacted]'s own statements and a few screenshots from his coaching website. The record does not include independent evidence confirming the distinguished reputation of [redacted] [redacted]'s coaching business in the industry.

With respect to the Petitioner's role with [redacted], the record contains a screenshot from the organization's website indicating that [redacted] was founded in 2013 by [redacted] and [redacted] [redacted] "to promote the talents and ambitions of [redacted]" with "vested interest in Hollywood dealings." However, the record does not contain any independent evidence regarding [redacted] or its reputation that would support a finding that it enjoys a distinguished reputation in the Petitioner's industry. As discussed above, [redacted] identifies the Petitioner as a member of the "committee" and indicates that he has "played a pivotal role in the development of [redacted] artists for our organization." However, his statements do not clearly identify what the Petitioner's role encompasses or sufficiently explain how he has contributed to the overall success of the organization's activities.

Finally, with respect to the Beneficiary's role with [redacted] [redacted], the record contains a letter from senior lead instructor [redacted], who states that he expanded his [redacted] teachings to include stunt choreography and "decided to bring [the Petitioner] on board as an assistant to some of my personal clients who are currently very successful in the entertainment industry." [redacted] explains that since the Petitioner had been trained in stunt

[6] *See* USCIS Policy Memorandum PM-602-0005.1, *supra*, at 10.

choreography and stage combat, he possessed the "knowledge to help adapt [redacted] from its traditional training and movements to acting scenes, camera angles and stunts for movies." [redacted] further states that the Petitioner "was so successful in expanding my knowledge and explaining set designs and position that I brought him on personally to help train [redacted]" His letter was accompanied by two blog articles about [redacted] but the Petitioner did not submit any additional evidence in support of a claim that the particular studio where [redacted] works enjoys a distinguished reputation.

Although the Petitioner references [redacted]s letter on appeal, he has not established how he served in a leading or critical role with [redacted] by acting as an assistant for one of its instructor's "personal clients." In fact, it is unclear whether he was even employed by the organization or whether he simply assisted [redacted] with his own private clients. Further, as noted, the record contains no independent evidence establishing that [redacted] or [redacted] enjoys a distinguished reputation; [redacted]'s statement that he personally trained [redacted] for a movie is not sufficient to establish the reputation of the establishment that employs him. The Petitioner has not submitted sufficient evidence of his leading or critical role with this organization or the organization's distinguished reputation.

Accordingly, the Petitioner did not show that he satisfies this criterion.

B. O-1 Nonimmigrant Status

We note that the record reflects that the Petitioner was previously granted 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. *Louisiana Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, at *2 (E.D. La. 2000).

III. CONCLUSION

The Petitioner has not submitted the required initial evidence of either a one-time achievement or documents that meet at least three of the ten criteria. As a result, 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 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).

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.