U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

In Re: 5566576

Date: JAN. 29, 2020

Motion on Administrative Appeals Office Decision

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

The Petitioner, a barista, 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 record did not establish that the Petitioner had a one-time achievement (a major, internationally recognized award) or met at least three of the required evidentiary criteria. The Petitioner appealed the matter to us, and we dismissed the appeal. The Petitioner then filed a motion to reopen the matter with us, which we denied.

On second motion, the Petitioner submits additional evidence and asserts that he meets the additional criterion claimed in his initial motion.

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 review, we will dismiss the motion to reopen.

## I. LAW

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). If that petitioner does not submit this evidence, then he or she must provide 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 submits qualifying evidence under at least three criteria, we will then determine whether the totality of 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.[1]

A motion to reopen is based on documentary evidence of new facts. The requirements of a motion to reopen are located at 8 C.F.R. § 103.5(a)(2). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

## II. BACKGROUND

In her decision, the Director determined that the Petitioner met two of the requisite three criteria, regarding awards or prizes under and judging, but did not meet a third claimed criterion related to published material. On appeal, we upheld the Director's decision.[2] The Petitioner then filed a motion to reopen with us, providing new evidence and again claiming to meet the criterion for published material. We subsequently dismissed this motion, determining that the evidence did not demonstrate his eligibility for the additional criterion.[3]

The Petitioner now submits a second motion to reopen, provides new evidence, and asserts that these materials demonstrate that he meets the published material criterion.

## III. ANALYSIS

At the outset, the Petitioner did not include the required statement about whether or not the validity of the unfavorable decision has been, or is, the subject of any judicial proceeding. 8 C.F.R. § 103.5(a)(1)(iii)(C). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4). Moreover, for the reasons discussed below, the new evidence submitted in support of the instant motion to reopen does not demonstrate that the Petitioner satisfied an additional criterion, as claimed.

### A. Motion to Reopen

We previously determined on motion that the Petitioner had not submitted evidence sufficient to establish that he met the published material criterion. On second motion, the Petitioner provides five articles, some of which were previously submitted, as well as documentation regarding the sources in which these articles were published. Three of these articles, [redacted]" published at sprudge.com, "[redacted]," published at www.[redacted].com, and "[redacted]

[1] *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).

[2] *See Matter of M-M-M-*, ID# 1521185 (AAO July 16, 2018).

[3] *See Matter of M-M-M-*, ID# 2354183 (AAO Mar. 7, 2019).

[4] The Petitioner submitted this document with his first motion and asserted that it was published at www.[redacted].com. In

[redacted]" published at ireport.cnn.com, are about the Petitioner and related to his work. However, the Petitioner has not submitted evidence sufficient to demonstrate that sprudge.com, [redacted].com, or ireport.cnn.com are professional or major trade publications or other major media, as required.

Evidence of published material in professional or major trade publications or in other major media publications about the alien should establish that the circulation (on-line or in print) is high compared to other circulation statistics and show who the intended audience of the publication is, as well as the title, date and author of the material.[5] With respect to sprudge.com, the Petitioner provides several documents ranking the web site among other coffee blogs and RSS feeds. The first, a document titled "Top 100 Coffee Blogs, News Websites & Newsletters to Follow in 2019" posted on the Feedspot website (https://blog.feedspot.com/coffee_blogs), ranks sprudge.com first of 100 blogs and indicates that it has tens of thousands of followers on social media. However, while the document states that the list is based upon "search and social metrics," we note that the ranking does not correspond to the indicated number of social media followers for the blogs and does not clarify how sprudge.com received the top ranking on this list. In addition, the document notes that it is compiled "from thousands of top Coffee [*sic*] blogs in our index," thereby excluding any blogs not in the index. Further, the Petitioner does not demonstrate the significance of this ranking or show how it reflects a status of major media in comparison to other media.

A second article also from Feedspot, "Top Coffee RSS Feeds," ranks sprudge.com as the top RSS feed and describes it as "a site devoted to coffee news and culture" and "a great resource if you want to know what's happening in the world of coffee, and who is writing about it," but fails to indicate how this ranking was determined. Again, the Petitioner does not establish the significance of such a rank, or otherwise provide an objective comparison to show how receipt of such a rank is reflective of a status of major medium. Two additional articles, "8 Unique Coffee Sites for Coffee News," and "9 Blogs for Coffee Lovers," also include sprudge.com. However, these articles do not provide comparative statistics for the included coffee sites or blogs, or otherwise demonstrate how being identified as a unique coffee site or one recommended to coffee lovers, is reflective of major media.

As it relates to [redacted].com, the Petitioner provides two articles titled "Media in [redacted]" and "[redacted] TV" from wikipedia.org,[6] and one from yelp.com titled "The Best 10 Television Stations in [redacted]." The Wikipedia articles both identify [redacted] as a television channel and affiliate of NBC in [redacted], and the article titled [redacted]-TV" indicates that the channel's website is www.[redacted].com. However, the documents do not reflect that [redacted].com's online circulation is high relative to that of other websites, or otherwise demonstrate that [redacted].com is a major medium. The Wikipedia articles simply

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our decision, we determined that as it lacked "identifying characteristics from '[redacted]' or an Internet address," the evidence did not support this assertion. The document presented on second motion includes a link to this site, and so we will consider it here.

[5] *See* USCIS Policy Memorandum PM 602-0005.1, *Evaluation of Evidence Submitted With Certain 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.

[6] We note that Wikipedia is an online, open source, collaborative encyclopedia that explicitly states it cannot guarantee the validity of its content. *See General Disclaimer, Wikipedia* (January 21, 2020) https://en.wikipedia.org/wiki/Wikipedia:General_disclaimer; *Badasa v. Mukasey*, 540 F.3d 909 (8th Cir. 2008).

describe the news media in [redacted] and provide a description of [redacted] TV. The web printout from yelp.com ranks television stations in [redacted], Washington, rather than websites. The Petitioner does not show how a television station's rank based upon reviews on yelp.com demonstrates that its affiliated web site is a major medium.[7]

Regarding the article about the Petitioner published at ireport.cnn.com, he also has not established that this website qualifies as a major medium. While we acknowledge that CNN and its website are major media, the printout in the record indicates that this article was published on CNN iReport's website rather than by CNN. Specifically the article's banner reads "CNN iReport," and the article itself contains a statement that it was "[n]ot verified by CNN." The Petitioner does not clarify the relationship between CNN iReport and CNN, nor does he demonstrate that an article published there has the same visibility or readership as an article published on CNN's website. Further, the Petitioner does not provide on-line circulation statistics for CNN iReport or for comparative media to show that ireport.cnn.com's circulation is high relative to others, and thus is a major medium.

The remaining articles are not about the Petitioner, as required. One article, "[redacted]" published at https://thecurbkaimuki.com, discusses the increasing numbers of visa denials at world coffee competitions and identifies several baristas who have had visas denied, of which the Petitioner is one. However, its primary focus is visa denials in general, with a discussion focusing on the Mexican barista champion's 2019 visa denial. The second, "[redacted]" published online at baristamagazine.com, is an interview with the 2018 Iran Barista Champion, and does not mention the Petitioner. Articles that are not about a petitioner do not meet this regulatory criterion. *See, e.g., Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at *1, *7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles regarding a show are not about the actor).

Even were these articles about the Petitioner, he does not provide sufficient evidence on motion to demonstrate that they appear in major media or professional or major trade publications. As it relates thecurbkaimuki.com, the record lacks evidence, such as on-line publication statistics or other relevant material for these sites, showing that the circulation for this web page is high relative to other online publications, or showing their intended audiences. Regarding baristamagazine.com, the Petitioner provides, among other evidence, a March 2019 article titled "Top 5 Coffee Magazines, Publications & Ezines To Follow In 2019," from blog.feedspot.com ranking it in first place and stating that the website has 29,045 Facebook fans and 42,813 Twitter followers. Again, the Petitioner does not demonstrate the significance of these statistics or show how they reflect a status of major media. He also includes a 2019 media kit for *Barista Magazine* indicating, "more than 100,000 people online" read the magazine, but does not provide independent evidence corroborating this assertion, or submit evidence, such as on-line circulation statistics or other relevant materials, showing these statistics are high relative to those of other websites. Furthermore, 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 reliable evidence of major media). We note that the aforementioned

[7] We note that the Petitioner indicates in the brief included with its first motion that this article was "accompanied by an interest piece which aired on [redacted] 7:00 news." However, the record lacks evidence supporting this assertion, such as a link to a video or transcripts. Moreover, the Petitioner does not demonstrate how the [redacted] television station's rank on yelp.com reflects a status of major medium.

article "8 Unique Coffee Sites for Coffee News" also mentions baristamagazine.com, but again the Petitioner does not demonstrate how being mentioned as one of eight unique coffee websites establishes that the web site is a major medium.

For the foregoing reasons, the new evidence submitted by the Petitioner does not establish his eligibility for the published material criterion at 8 C.F.R. § 204.5(h)(3)(iii).

## III. CONCLUSION

The new evidence submitted by the Petitioner on motion is not sufficient to demonstrate that he has fulfilled at least three of the initial evidentiary requirements. 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 motion will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

**ORDER:** The motion is dismissed.