U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 10792696

Date: OCT. 5, 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 met the initial evidence requirements of this classification by demonstrating his receipt of a major, internationally recognized award or meeting at least three of the evidentiary criteria listed under 8 C.F.R. § 204.5(h)(3). The Petitioner then appealed the matter, asserting that he met a third criteria in addition to the two that the Director found he met. We dismissed the appeal, as well as two subsequent motions to reopen, finding that the evidence was not sufficient to show that he met this third criterion. The Petitioner now files a third motion to reopen, submitting additional evidence relating to that third criterion, and for the first time claims to meet a fourth criterion.

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.

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 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).

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. ANALYSIS

The Director found that the Petitioner established that he met two of the ten criteria listed under 8 C.F.R. § 204.5(h)(3). On appeal, we agreed with the Director that the Petitioner's win at the 2015 [redacted] Barista Championship satisfied the criterion relating to lesser nationally or internationally recognized awards, and that his participation as a judge at other competitions satisfied the criterion under 8 C.F.R. § 204.5(h)(3)(iv). We also agreed that the Petitioner had not submitted sufficient evidence to show that he met the criterion under 8 C.F.R. § 204.5(h)(3)(iii) relating to published material about him in professional or major trade publications or other major media.

Following our dismissal of his appeal, the Petitioner submitted two motions to reopen, adding additional evidence to the record regarding media which we determined had published material about him and his work. This evidence included data on visits to the websites which published the material about him, lists of coffee-related internet sites compiled by on blogs, and general information about a local television station which posted an article about him attending the World Barista Championships. In our previous motion decisions, we determined that this evidence did not establish that any of the media were one of the qualifying types per 8 C.F.R. § 204.5(h)(3)(iii).

With this third motion, the Petitioner submits additional information about only one of those mediums, the website sprudge.com. This evidence, much like the previously submitted evidence from feedspot.com, provides lists of coffee related blogs, all of which list sprudge.com. One of these, the coffeeconcierge.net, states that "these are just my personal favorite coffee blogs (and vlogs) listed in no particular order," and lists sprudge.com as one of 15, calling it " quite possibly the biggest online coffee publication in the world." Another, atlascoffeeclub.com, lists 14 of "some of the best coffee blogs we know (presented in no particular order)" and states that "Sprudge is widely recognized as one the best coffee blogs around." A third such list was published on coffeemakered.com, titled "Most Influential Coffee Bloggers of 2018."

Although this evidence shows that Sprudge is popular with its fellow coffee blogs, this evidence does not establish that it qualifies as a professional or major trade publication or other major media. As we stated in our previous decision, evidence should establish that the circulation (on-line or in print) is high compared to other circulation statistics and show who is the intended audience of the publication.[1] Judging by the descriptions provided in the blog ranking articles, Sprudge appears to cater to coffee enthusiasts, including guides to coffee shops in several cities, and thus cannot be considered a professional publication. Further, the ranking articles do not provide circulation or comparable figures

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

for Sprudge and the other listed blogs, but instead are compiled based upon the writers' opinions. Therefore, the new facts included with this motion are not sufficient to show that Sprudge is a professional, major trade or other major medium, and do not establish that the Petitioner meets the criterion at 8 C.F.R. § 204.5(h)(3)(iii).

The Petitioner also submits new evidence in support of a claim to the criterion at 8 C.F.R. § 204.5(h)(3)(ix) relating to a high salary compared to others in his field. Included in this evidence is a business license dated January 29, 2011, showing that the Petitioner was granted a license for a business called [redacted] in [redacted]. The new evidence also includes a trademark registration for the business dated July 14, 2014, and a "Tax Clearance Certificate" from the Tax Department of [redacted] dated February 19, 2020. The certificate states that the Petitioner (and/or his business) had a total net income of 18,453,652,700 [redacted] in the years 2009-14, and that his business was not active after 2015. The Petitioner asserts that this figure "can be noted as the highest income in compare with 90% of all existance [*sic*] cafes in that period of time in [redacted] which is an evidence to this fact." He goes on to provide estimates of the average income of café owners, but these figures, or those he uses to arrive at the 90% figure, are not supported by evidence in the record. As the record lacks evidence to establish that the Petitioner earned a high salary when compared to that of other baristas or café owners, he has not established that he meets this criterion.

Per the above analysis, our review of the new evidence submitted with the Petitioner's motion to reopen does not establish that he meets either of the individual criteria claimed, or that he is otherwise eligible for the requested benefit.

ORDER: The motion to reopen is dismissed.