U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 17041987

Date: MAY 27, 2021

Appeal of Nebraska Service Center Decision

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

The Petitioner, a violist, 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 record did not establish that the Petitioner had satisfied at least three of ten initial evidentiary criteria, as required. The matter is now before us on appeal.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. 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 immigrant visas available to individuals 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 international 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 has played the viola in various orchestras since 1990. Most of his earliest positions were in various orchestras in [redacted] In 2002, he joined the [redacted] Symphony, reaching the principal viola chair in 2008. The Petitioner later played principal viola with the [redacted] Symphony Orchestra and, starting in 2016, the [redacted] Orchestra. The Petitioner entered the United States in 2017 as an O-1 nonimmigrant, following the approval of a petition filed by [redacted]

We acknowledge that O-1 nonimmigrant status relates to extraordinary ability. Nevertheless, the record of proceeding for the approved nonimmigrant petition is not before us, and we cannot determine whether the facts in that case were the same as those in the present proceeding, or whether the nonimmigrant petition was approved in error.

The Petitioner makes inconsistent claims about his most recent employment. When the Petitioner filed the petition in January 2020, he claimed to still be working for [redacted] from "2016–present." But in a subsequent response to a request for evidence (RFE), the Petitioner asserts that he played for [redacted] "from 2016 – 2019," meaning the employment ended before he filed the petition. [redacted]'s 2016 job offer letter specifies a three-year term of employment, but because this letter predates the employment, it does not establish that [redacted] actually employed the Petitioner until 2019. An itinerary in the record ends at September 2018, which is broadly consistent with U.S. Citizenship and Immigration Services (USCIS) records showing that the approval of the O-1 nonimmigrant petition was revoked in September 2018.

In a July 2019 letter, the manager of the [redacted] Symphony Orchestra states that the Petitioner "has played in the orchestra for one season." The present record of proceeding does not indicate that the Petitioner was authorized to work in the United States between the September 2018 revocation of his O-1 status and January 2020 when he filed the petition.

Because the Petitioner has not indicated or shown that he 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 Petitioner initially claimed to have satisfied four of these criteria, summarized below:

- (i), Lesser nationally or internationally recognized prizes or awards;
- (vii), Display at artistic exhibitions or showcases;
- (viii), Leading or critical role for distinguished organizations or establishments; and
- (x), Commercial success in the performing arts.

The Director concluded that the Petitioner met two of the criteria, numbered (vii) and (viii). On appeal, the Petitioner asserts that he also meets the criterion numbered (i). The Petitioner does not contest the Director's conclusions regarding the criterion numbered (x), and therefore we consider that issue to be abandoned.[1]

Upon review of the record, we agree with the Director that the Petitioner has satisfied only two criteria. We will discuss the remaining claimed criterion below.

> *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 Petitioner's sole argument on appeal is that he received a nationally recognized award in [redacted] and that the Director erred by concluding otherwise.

In October 2000, [redacted] including the Petitioner, received a certificate which reads, in part:

This certificate was awarded to

[redacted]

. . . .

For the best performance of the [redacted]'s composer's work

In the

[redacted] NATIONAL MUSIC COMPETITION

(STRING QUARTETS)

A separate certificate from the same competition indicates that the quartet "was awarded the First Prize." It is not clear whether the two certificates refer to the same prize. Although the competition took place in [redacted] the certificates are almost entirely in English. The Petitioner asserts that this "music competition is nationally recognized in [redacted]" but he submits no evidence to support this claim. The assertion that the prize "is named after . . . a historically famous [redacted] Composer" is not evidence of the prize's recognition.

[1] *See Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012) (stating that when a filing party fails to appeal an issue addressed in an adverse decision, that issue is waived). *See also Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005), citing *United States v. Cunningham*, 161 F.3d 1343, 1344 (11th Cir. 1998); *Hristov v. Roark*, No. 09–CV–27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (plaintiff's claims were abandoned as he failed to raise them on appeal to the AAO).

In the denial notice, the Director concluded that the Petitioner did not establish that the prize is nationally or internationally recognized. The Director noted, by way of example, that the Petitioner did not show that the awarding of the prize attracted any media coverage.

On appeal, the Petitioner states that the concert "predates online record keeping – especially for [redacted] so finding publications or news stories about the concert is impossible." The Petitioner makes this assertion with no evidence. Even if we were to accept the Petitioner's unsupported claim that there were no online news publications in [redacted] in 2000, this would not rule out the existence of other forms of news archives.

The Petitioner submits a new letter from the founder of the [redacted] in [redacted]. Because the RFE did not mention the awards criterion or specifically request any further evidence relating to awards, we will consider this new submission now. The individual states that [redacted] founded the [redacted] Music Competition; that the competition included a concert broadcast to "half a million international listeners"; and that "[t]he concert was hailed as a success by the International Artist Managers' Association in the UK during their [redacted] Orchestras Summit in 2001."

The Petitioner does not corroborate any of these claims, put forward in a letter written 20 years after the fact. A letter from one of the festival's own founders is not evidence of recognition outside the organization. And even then, the letter emphasizes the response to the concert rather than the recognition accorded to the awards. The Petitioner claims that this individual "states that first prize in the competition is recognized as a very high honor," but the letter includes no such assertion about the prize.

The Petitioner does not establish that the Director erred with respect to the prize that the Petitioner received in October 2000. Because this issue is the only stated basis for the appeal, the Petitioner has not otherwise established eligibility or overcome the denial of the petition.

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 lesser 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 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 those who are individually at the top of their respective fields. Affiliation with well-known establishments is one of many factors to be taken into consideration, but does not establish eligibility on its face. 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 recognition of his work is indicative of the required sustained national or international acclaim or demonstrates 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 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).

The Petitioner has not demonstrated eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.