U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 23092683

Date: DEC. 12, 2022

Appeal of Texas Service Center Decision

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

The Petitioner, a jewelry maker, seeks classification as an individual of extraordinary ability in the arts. 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 Texas Service Center denied the Form I-140, Immigrant Petition for Alien Worker, concluding that the Petitioner had satisfied only two of the ten initial evidentiary criteria, of which he must meet at least three. On appeal, the Petitioner asserts that he meets four additional evidentiary criteria. 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,
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> (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
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> (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

A. Evidentiary Criteria

Because the Petitioner has not 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 two of the evidentiary criteria, that of 8 C.F.R. § 204.5(h)(3)(iv), related to judging others' work and that of 8 C.F.R. § 204.5(h)(3)(vii), related to artistic exhibitions and showcases. On appeal, the Petitioner asserts that he meets four additional evidentiary criteria, which we will analyze below. While we may not discuss each piece of evidence individually, we have reviewed and considered each one.

> Documentation of the individual*'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)

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.[1] To evidence his eligibility under this criterion, the Petitioner provided a membership certificate signed by the head of administration for the [redacted] Regional Administration of [redacted] Association of People's Masters, Craftspeople and Artists of the Republic of Uzbekistan," which states that the Petitioner's membership certificate was for the "making of memorial wares," and was valid from October 2016 to October 2017.[2] Accompanying the

[1] See generally 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] The Petitioner must establish eligibility at the time of filing for the requested benefit and must continue to be eligible for the benefit through its adjudication. 8 C.F.R. § 103.2(b)(1). Similarly, we conclude that for a certificate to serve as evidence of eligibility under this criterion, it must have been valid at the time of filing and continue to remain valid through the adjudication of the petition.

certificate is a 2016 reference document, signed by the head of the [redacted] and stating that since 2011, the Petitioner has been a member and specialist of the [redacted] Department of [redacted] Association of [redacted] Region."

To evidence how the Petitioner became a member of the association, he submitted a 2018 letter from the Chairman of the [redacted] Department of [redacted] Association, which states that the Petitioner has been a member of the [redacted] Association since 2008 and that he remains a current and full member of the association. The author explained that admission to the association is based upon the recommendations of the Art Experts Council, a group composed solely of nationally or internationally recognized experts in their respective fields of folk art. The letter further states that two specific internationally known art critics recommended the Petitioner for membership and that they based their recommendations upon the Petitioner's outstanding achievements as a master of [redacted] traditional jewelry making. While the two art critics each provided letters explaining why they recommended the Petitioner for membership, neither critic describes any specific outstanding achievement(s) that enabled the Petitioner to become a member in the association. Instead, the authors praise the Petitioner's style and methods in jewelry making and then declare that he has outstanding achievement. The authors do not support their assertions with corroborating details about any specific outstanding achievement(s), rather they simply repeat the language found in the extraordinary ability regulations. Repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. 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.).

In response to the Director's request for evidence (RFE), the Petitioner provided an additional letter from the "CEO of [redacted], Republic of Uzbekistan" to suggest that the association has 1,200 members in a regional branch of the [redacted] Union." However, the record does not reflect how many regional branches exist or whether the [redacted] Union is the same as the [redacted] Association or the [redacted] District Department of [redacted] Association. In the Petitioner's RFE response, he provided another letter from the CEO of [redacted] which stated that the Petitioner was "elected to" the association, which does not necessarily support a finding that his membership was based on outstanding achievement.

Notably, the evidence contains various names for the association without an explanation of its structure such that we can ascertain what the name variations represent. We cannot determine which name is the correct name or whether all the different names refer to the same entity.[3] As the association's name is inconsistent throughout the record, we cannot determine in which association the Petitioner claims membership. In addition to inconsistencies in the name, the documents contain inconsistent dates for when the Petitioner became a member. The certificate stated that the Petitioner was a member from October 2016 to October 2017; the reference document stated that he has been a member since 2011; initial letters state that he has been a member since 2008; and a letter submitted in the RFE response stated that the Petitioner became a member in 2012. While the evidence suggests that the Petitioner's membership expired in October 2017, a 2018 letter conflicts with this information when it states that the

[3] To illustrate, the evidence includes numerous association names, including "City Department of Department of [redacted] region [redacted] Association of artisans, Craftsmen and artists of Uzbekistan," [redacted] Regional Administration of [redacted] Association of People's Masters, Craftspeople and Artists of the Republic of Uzbekistan," [redacted] District Department of [redacted] Association of [redacted] Region," [redacted] Association," [redacted] Association of Folk Artists, Republic of Uzbekistan," and [redacted] Union."

Petitioner is a current and full member. The Petitioner must resolve these inconsistencies with independent, objective evidence pointing to where the truth lies. Matter of Ho, 19 I&N Dec. 582, 591-92 (BIA 1988). However, even if the Petitioner had resolved the inconsistencies related to the association name and his membership dates, the record would still not support a finding that the association requires outstanding achievements of their members.

We therefore conclude that the Petitioner has not established that he meets this criterion.

> Published material about the individual in professional or major trade publications or other major media, relating to the individual *'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.[4] The Petitioner provided evidence of articles written about the Petitioner and his jewelry making in various media including the newspapers Bukhoro Okshomi, Bukharian Times, and Business City, as well as the magazine, Tasvir. However, the Petitioner did not establish that the media sources represent professional or major trade publications or other major media. Where circulation or readership figures were provided, the Petitioner did not explain or show the significance of the figures such that they substantiate a finding that the media have major status or standing.[5]

We acknowledge that Bukhoro Okshomi claims a readership of 10,000, that it publishes twice a week, and that it circulates 2,000 printed copies, while Tasvir claims a readership of more than 10,000 people, and Business City claims a circulation of 10,000 to 20,000 copies per month. However, these are self-reported figures from the newspaper's editor or publisher. The Petitioner did not support the record with independent, objective evidence corroborating the newspapers' claims. USCIS need not rely on the self-promotional material of the publisher. See Braga v. Poulos, No. CV 06 5105 SJO (C.D.C.A. 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 a major medium); see also, e.g., Victorov v. Barr, No. CV 19-6948-GW-JPRX, 2020 WL 3213788, at *8 (C.D.C.A. Apr. 9, 2020).

Regarding Bukharian Times and Business City, the evidence suggests that their coverage of the Petitioner is self-promotional in nature, and that the Petitioner may have paid the newspaper to feature articles about him and his jewelry. The record contains evidence that both newspapers sell advertising space. For instance, the Bukharian Times lists various prices based upon the amount of space purchased, as well as for printing in black and white or in color. Similarly, as the Petitioner appears to have written the Tasvir article himself, we question whether advertisement space can be purchased in Tasvir as well. Marketing materials created for the purpose of selling a foreign national's products or promoting his or her services are not generally considered to be published material about the foreign national.[6] In addition, a separate criterion at 8 C.F.R. § 204.5(h)(3)(vi) considers the authorship of scholarly articles in the field, and as such, autobiographical material is generally not considered to be

[4] See generally USCIS Policy Memorandum PM 602-0005.1, supra, at 7.
[5] See id. (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).
[6] See generally USCIS Policy Memorandum PM 602-0005.1, supra, at 7.

about the foreign national.

Accordingly, the Petitioner does not meet this criterion.

> 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 satisfy the regulation at 8 C.F.R. § 204.5(h)(3)(v), a petitioner must establish not only that they have made original contributions, but that they have been of major significance in the field. 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.[7] In support of this criterion, the Petitioner provided numerous letters from individuals in the Uzbekistan art community, including but not limited to letters from [redacted] a museum art curator; [redacted] the [redacted] "Department of the Art Authentication of the Ministry of Culture and Sports of the Republic of Uzbekistan in [redacted] Region;" and [redacted] and [redacted] museum art directors.

The authors of the letters praise the Petitioner for his ability to mix traditional and modern styles of jewelry, his "creative rethinking" and methods of jewelry making, and the uniqueness of his jewelry. However, the authors did not identify any specific original contributions the Petitioner has made in the field, nor did they provide detailed information explaining how the contributions have been majorly significant in the field. For instance, while the Petitioner's creativity as a jewelry maker may be a praiseworthy quality, the authors do not explain how this represents an original contribution in the field. In addition, the authors continuously repeat regulatory language and terminology without supporting their statements with specific details or corroborating documentation. Most of these letters are similar in language such that we question whether they were independently written. The similar, oftentimes identical, wording strongly suggests a common author, whom we can infer to be the Petitioner or Counsel.[8]

Letters that specifically articulate how a petitioner's contributions are of major significance to the field and have impacted subsequent work add value.[9] On the other hand, letters that lack specifics and use hyperbolic language do not add value and are less probative.[10] Depending on the specificity, detail, and credibility of a letter, USCIS may give the document more or less persuasive weight in a proceeding. The Board of Immigration Appeals (the Board) has held that: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." Id. If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. Matter of Y-B-, 21 I&N Dec. 1136 (BIA 1998). Moreover, USCIS need not accept primarily conclusory statements. *1756, Inc. v. The U.S. Att'y Gen.*,

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[7] See Visinscaia, 4 F. Supp. 3d 126 at 134.

[8] Cf. Mei Chai Ye v. U.S. Dept. of Justice, 489 F.3d 517, 519 (2d Cir. 2007) (an immigration judge may reasonably infer that when an asylum applicant submits strikingly similar affidavits, the applicant is the common source).

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

[10] 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).

745 F. Supp. 9, 15 (D.D.C. 1990). Here, the letters label the Petitioner's work as "major," "significant," or "original," but the authors do not substantiate their claims with details or examples.

On appeal, the Petitioner continues to reiterate that he has made original contributions in the field because he mixes tradition with modernity, his pieces have unique cultural meaning, and his jewelry and work demonstrate artistic excellence. However, as stated, neither the authors of the reference letters nor the Petitioner have substantiated these assertions with specific details or sufficient corroborative evidence. Further, even if the Petitioner's work in general could be considered an original contribution, the evidence does not support a finding of its significance in the field.

Because the Petitioner has not established that he has made original contributions which have been of major significance in the field, we conclude that he does not meet this criterion.

> Evidence of the individual *'s* authorship of scholarly articles in the field, in professional or major trade publications or other major media. 8 C.F.R. § 204.5(h)(3)(vi).

The regulation at 8 C.F.R. § 204.5(h)(3)(vi) requires "authorship of scholarly articles in the field, in professional or major trade publications or other major media."[11] In general, scholarly work(s) should have footnotes, endnotes, or a bibliography, and may include graphs, charts, videos, or pictures as illustrations of the concepts expressed in the article.[12] For other fields, a scholarly article should be written for learned persons in the field. Learned persons include all persons having profound knowledge of a field.[13]

The Petitioner submitted evidence that he authored several articles and two books containing content such as a biographical history of the Petitioner, an explanation of his materials and methods, a history of [redacted] jewelry, as well as numerous photos of the Petitioner and his jewelry. The written materials provide general information about [redacted] jewelry and offer an overview of the Petitioner's life, career, and methods. As such, the content does not support a finding that it is written for learned persons in the field. Furthermore, although one written work contains a list of references at the end of it, the written material itself does not include any indication of where in the work the Petitioner cited or used the claimed references.

The Petitioner has not provided sufficient evidence to establish that his articles and books have appeared in professional or major trade publications or other major media. In fact, the Petitioner has not provided sufficient evidence that his works have appeared in any media at all. We acknowledge the Petitioner claims that his articles appeared in Bukhoro Okshomi, Bukharian Times, and Tasvir; however, this is insufficient to establish that that the Petitioner's written works appeared in any professional or major trade publications or other major media. To illustrate, the works include an initial or ending page that contains "published in" or "published by" type of information, the number of copies printed, other information about the publishing company and editor, or a letter from the editor. Nevertheless, it is not apparent from this evidence that the works actually appeared in any media, as opposed to simply being printed or published.

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[11] See generally USCIS Policy Memorandum PM-602-0005.1, supra, at 9.
[12] Id.
[13] Id.

In addition, as we previously discussed and incorporate here by reference, the record does not establish that Bukhoro Okshomi, Bukharian Times, and Tasvir are professional or major trade publications or other major media. While the Petitioner provided a letter stating that his book is used as a tutorial in a public school, this is insufficient to establish that the book is either scholarly or published in a professional or major trade publication or other major media. Further, the Petitioner has not explained how public school students would meet the definition of "learned" individuals in his particular field, such that his book could be considered scholarly.

Although the Petitioner submitted an accompanying "review" for his written works, some of the reviews are no more than letters from an editor or publisher providing a brief summarization of the contents of the written work. Although the reviews of the Petitioner's books are longer, it is not apparent where the reviews of the books were published or that the books themselves were published and available for reading.[14] In other words, the "reviews" themselves do not suggest that the material actually appeared in major trade publications or other major media.

On appeal, the Petitioner presents an advisory opinion letter from [redacted] concerning the Petitioner's eligibility under the extraordinary ability criteria. Although [redacted] a filmmaker and professor, speaks highly of the Petitioner and his work, [redacted] opinion largely repeats the conclusions of others and frequently quotes documents already provided in the record. [redacted] does not present evidence or analysis that overcomes the deficiencies the Director identified in the decision. As a matter of discretion, we may use opinion statements submitted by the Petitioner as advisory. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, we will reject an opinion or give it less weight if it is not in accord with other information in the record or if it is in any way questionable. Id. We are ultimately responsible for making the final determination regarding an individual's eligibility for the benefit sought; the submission of expert opinion letters is not presumptive evidence of eligibility. Id. Here, [redacted] letter does not contain sufficient independent analysis, nor does he offer support for his conclusory statements. In addition, although he stated that through his academic history and professional experience as a filmmaker, he developed expert knowledge on how to analyze, evaluate, and characterize job duties, responsibilities, qualifications, and expertise, [redacted] does not demonstrate knowledge of [redacted] artisanal crafts or jewelry making such that he would be qualified to offer his opinion on the Petitioner's eligibility.

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 reviewed the record in the aggregate, and conclude that it does not support a finding that the Petitioner established the acclaim and recognition required for the classification sought. It is the Petitioner's burden to

[14] A review of one of the books comes from the "head of the [redacted] department of the Association of [redacted] and a review of another book comes from an "International expert of Center Handicraft Development," but there is little information to suggest where these reviews appeared.

establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; Matter of Skirball Cultural Ctr., 25 I&N Dec. 799, 806 (AAO 2012).

The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields. 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 that 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.