U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 23090852

Date: DEC. 23, 2022

Appeal of Texas Service Center Decision

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

The Petitioner, a musician, 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 Texas Service Center Director denied the Form I-140, Immigrant Petition for Alien Workers (petition), concluding that even though the Petitioner met at least three of the ten regulatory criteria, he did not establish he is one of the small percentage at the very top of the field of endeavor or that he has demonstrated sustained acclaim.

The matter is now before us on appeal. The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). We review the questions in this matter *de novo*. *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). 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 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 is a musician who plays the Venezuelan cuatro; a stringed instrument prevalent in Latin American folk music. His recent activities include work in advertising and performing in a series of concerts in the United States while here on his O-1 nonimmigrant visa.

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). Before the Director, the Petitioner claimed to have met the following six categories:

- Display of his work at artistic exhibitions or showcases;
- High salary or remuneration;
- Lesser prizes or awards;
- Published material about him and his work;
- Participation as a judge; and
- Performance of a leading or critical role for distinguished entities.

The Director decided the Petitioner met four of the evidentiary criteria relating to awards, published material, judging, and leading or critical roles, but that he had not satisfied the remaining categories listed above. On appeal, the Petitioner no longer claims the display or high salary criteria, and he has abandoned those claims. After reviewing all of the evidence in the record, we are withdrawing the Director's favorable determinations on the awards and the published material criteria. The result is that the Petitioner will only satisfy two of criteria, but the regulation requires he meet three to proceed to a final merits determination.

> *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).

This criterion contains several evidentiary elements, all of which must be met to satisfy the regulation. According to the plain language of the regulation the evidence must establish: (1) the foreign national is the recipient of the prizes or the awards; (2) those accolades are nationally or internationally recognized; and (3) each prize or award is one for excellence in the field of endeavor.

The Petitioner claims to satisfy this criterion based on the following awards:

- [redacted] Award in 2015 for the Musician and Arranger of the Year; and
- [redacted] Award in 2017 for the Best Musician and Cuatro Player of the Year.

Within his correspondence to U.S. Citizenship and Immigration Services (USCIS), the Petitioner referred to these awards as the [redacted] Award. He further provided a testimonial letter from another artist stating the Petitioner was twice the recipient of the [redacted] award. The Director determined that the Petitioner met the requirements of this criterion. We conduct appellate review on a *de novo* basis. For the reasons outlined below, a review of the record of proceeding does not reflect that the Petitioner submitted sufficient documentary evidence establishing he meets the plain language requirements of this criterion and the Director's favorable determination on this issue is hereby withdrawn.

First, we note the record neither corroborates the Petitioner's nor the author of the testimonial letter's contention that he received an award titled [redacted] Award, or [redacted] Although the testimonial letter claims the Petitioner is the recipient of multiple prestigious awards, he failed to provide evidence of those particular awards. The regulation and the petition's instructions each informed the Petitioner that his initial evidence requirements included evidence he was the recipient of prizes or awards.

A testimonial letter from someone in the industry that is not corroborated by the primary evidence of the prize or award falls short of meeting the Petitioner's burden of proof that he received the specified award. *See* 8 C.F.R. § 103.2(b)(2) (indicating only where the filing party demonstrates that primary evidence does not exist or cannot be obtained may they rely on secondary evidence, and only where secondary evidence is demonstrated to be unavailable may the petitioner rely on affidavits or letters). Unsupported conclusory letters from those in the Petitioner's field are not sufficient evidence that a particular prize or award is nationally or internationally recognized.

Second, even though the Petitioner provided the awards as presented in the above bullets, the supporting materials to demonstrate those accolades are nationally or internationally recognized do not contain a sufficient nexus to the specific awards he provided for the record. The media coverage the Petitioner provided relates to a recurring event that issues awards; the [redacted] Awards. If it is the Petitioner's contention that any award emanating from this recurring event is adequate to satisfy this criterion, a prize or an award does not garner national or international recognition from the competition in which it is awarded, nor is it automatically derived from the individual or group that issued the award. Rather, national and international recognition results through the awareness of the accolade in the eyes of the field nationally or internationally. This recognition should be evident through specific means; for example, but not limited to, national or international-level media coverage.

Absent from the record is evidence demonstrating his specific awards garnered national or international recognition within his field of endeavor. Additionally, the Petitioner did not offer more general coverage relating to his specific awards (the Musician and Arranger of the Year and the Best Musician and Cuatro Player of the Year) originating from national or international media.

We also note some conflicting information within the evidence relating to the history of the awarding entity. The Petitioner provided a translated letter from [redacted], the president of [redacted] This is the entity that oversees the [redacted] Award events. [redacted] letter and the article from *El Universal* each reflect the award event was created 50 years ago. The article from *La Nota Latina* reflects the award event has 61 years of history. While these inconsistencies do not fully undermine the Petitioner's claims, he should be prepared to address or remedy the incongruent information in any future filing.

As the Petitioner has not adequately established his awards were nationally or internationally recognized, he has not satisfied all of this criterion's requirements and we withdraw the Director's favorable determination as it relates to this regulatory provision.

> *Published material about the alien in professional or major trade publications or other major media, relating to the alien'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).

The Petitioner provided six forms of evidence. The Director determined the Petitioner met the requirements of this criterion. We do not agree that any one form of evidence satisfies all of this criterion's requirements, and we will withdraw the Director's favorable determination.

This criterion contains multiple evidentiary requirements the Petitioner must satisfy. First, the published material must be about the Petitioner and the contents must relate to his work in the field under which he seeks classification as an immigrant. The published material must also appear in professional or major trade publications or other major media. Professional or major trade publications are intended for experts in the field or in the industry. To qualify as major media, the Petitioner must establish the circulation statistics are high relative to other similar forms of media. The final requirement is that the Petitioner provide each published item's title, date, and author and if the published item is in a foreign language, the Petitioner must provide a translation that complies with the requirements found at 8 C.F.R. § 103.2(b)(3). The Petitioner must submit evidence satisfying all of these elements to meet the plain language requirements of this criterion.

We begin by noting issues with the evidence relating to the Petitioner's most significant claim relating to published material about him and his work, from "*Billboard Venezuela Magazine and Online*." First, the original document is not the article itself and it appears the Petitioner copied the text and pasted it onto a Word document, then provided the URL and some other related information. We were unable to verify the article exists relying on the URL, and additional efforts to confirm the article's existence did not result in a discovery of any articles about the Petitioner on the *Billboard* website.

Additionally, when performing the copy and paste action, it appears they did not capture the full article as the text stops mid-sentence. Furthermore, the English translation is not a full translation of the

article as it begins mid-sentence. It also does not contain the title, date, and author as the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires. Finally, the Petitioner provided the website traffic information for the billboard.com website for the United States and not for Venezuela, and he did not offer evidence relating to the "billboard.com.ve"—".ve" for Venezuela—country top-level domain name as the evidence reflected. We conclude this evidence does not satisfy this criterion's requirements.

Now, we turn to the coverage from the publication *Iberoeconomía España en positive*. This evidence is in the form of an article, it contains a title and a date, but no author, which is required by the regulation at 8 C.F.R. § 204.5(h)(3)(iii). Additionally, this was originally a foreign language website, and the site does not appear to be an English version sponsored and translated by the website. This raises questions with regard to the manner in which the evidence was translated. Moreover, it is not accompanied by a certified translation that complies with the requirements found at 8 C.F.R. § 103.2(b)(3).

Focusing on the circulation statistics for this publication, we observe that the article is from October 2018 and the Petitioner provided the website traffic data from an unspecified source indicating the website receives approximately 88,000 monthly visits. USCIS policy discusses the requirements for published material under this criterion stating that it should "establish that the circulation (on-line or in print) is high compared to other circulation statistics and show who the intended audience is, as well as the title, date, and author of the material." *See generally* 6 *USCIS Policy Manual* F.2 (Appendices), https://www.uscis.gov/policymanual. The Petitioner did not submit other circulation statistics in which to compare with this publication. Without demonstrating the author of the article, establishing it was properly translated, and that the publication's circulation statistics were high compared to similar publications, the Petitioner has not provided sufficient evidence to establish the *Iberoeconomía España en positive* constitutes major media.

Next, the Petitioner offers two online articles from *Factores de Poder*. Both articles contain the title, date, and author and both are about the Petitioner and are related to his work. However, these articles do not satisfy all of the criterion's requirements because the Petitioner has not demonstrated it is a form of major media. The Petitioner provided a printout from *SimilarWeb* reflecting a country rank of 3,242, N/A for the category rank, and in illegible category title with an associated number of approximately 118,000. The evidence relating to both articles is poorly photocopied, and we are unable to determine what the 118,000 figure represents. This fails to satisfy the Petitioner's burden of proof as he has not demonstrated this publication's circulation is high compared to other circulation statistics. *See* 6 *USCIS Policy Manual*, *supra*, at F.2 (Appendices).

As the fifth form of evidence, the Petitioner offers an advertisement for a musical performance that appeared in the *El Universal* print newspaper. Although this content appeared in a newspaper in [redacted]2007, it is among a collection of advertisements for upcoming music and food events. The material lists the company that is putting on the event, the Petitioner and some of his songs, other artists he has performed with in the past, and the location, date and time of the event. Advertisements and announcements for shows and productions that simply list the Petitioner as one of the performers are not "published material" consistent with the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii). Additionally, this material is lacking an author, first of which it does not comply with this criterion's stated requirements, and second the absence of an author supports the view that it

is not published material consistent with the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii).

The final form of evidence the Petitioner claims is an interview on Vive TV. According to the certified translation of the Certificate, [redacted] the General Producer of Vive TV provided the URL where the content appears on Youtube. The interview was performed in a foreign language. The Petitioner only provided transcripts of the interview in the English language, but no original version in Spanish, and no certified translations. This material therefore does not satisfy the regulatory requirements relating to foreign language evidence. *See* 8 C.F.R. § 103.2(b)(3).

Regarding Vive TV as a form of major media, [redacted] letter reflects this entity broadcasts in Venezuela, but the record lacks any evidence of viewership, and the Petitioner did not offer evidence of other broadcasters in which to compare. While Vive TV may exist as a broadcast channel, the fact that it is broadcast over the airwaves or on cable does not establish its qualification as major media. For instance, a local high school or other local organization may broadcast programs on local access television, but the simple act of airing programs did not transform those shows into a form of major media. Were we to compare viewership ratings of local access programs to most productions of the major networks, we would draw stark contrasts in the number of viewers each medium receives. We therefore conclude the submitted evidence does not show a comparison to other television channels in Venezuela, and absent that evidence, the Petitioner has not demonstrated his television interview appeared in a form of major media. *See* 6 *USCIS Policy Manual* F.2 (Appendices).

Finally, [redacted] letter also provides a link to the interview on YouTube. The fact that the Petitioner's interview is available on YouTube is not persuasive that this is published material in major media. The internet in general and YouTube in particular are arenas available to any user with access to a computer regardless of notoriety or recognition in the arts. To ignore this reality would be to render the "major media" requirement in the regulation at 8 C.F.R. § 204.5(h)(3)(iii) meaningless. International accessibility on the internet by itself is not a realistic indicator of whether a given website constitutes "major media" published material.

We conclude the Petitioner has not submitted evidence that meets the plain language requirements of this criterion, and we withdraw the Director's favorable determination.

III. CONCLUSION

Because the Director granted four criteria and we have withdrawn two of those, the Petitioner has not satisfied the plain language requirements of at least three criteria. Although he claims eligibility for two additional criteria on appeal, relating to judging the work of others at 8 C.F.R. § 204.5(h)(3)(iv) and performing in a leading or critical role at 8 C.F.R. § 204.5(3)(viii), it is unnecessary for us to reach a decision on these additional criteria because he cannot numerically meet the required number of criteria. As the Petitioner cannot fulfill the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3), we reserve these issues. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (finding it unnecessary to analyze additional grounds when another independent issue is dispositive of the appeal); *see also Matter of D-L-S-*, 28 I&N Dec. 568, 576–77 n.10 (BIA 2022) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

He therefore 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 do not need to 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. For instance, the Petitioner received two awards during a career spanning almost two decades, and he only provided information relating to the event that issues those accolades.

However, the record lacks confirmation that his particular awards themselves received national or international attention. Considering the Petitioner's career is approaching two decades, such a showing of only two awards within a three-year span, that lack adequate recognition, does not represent sustained acclaim at the national or international level. Additionally, a small number of awards that are not among those that are highly regarded in the field do not amount to examples of extensive documentation of the Petitioner's accolades nor are they achievements that are commensurate with the small fraction of awards or prizes at the top of the Petitioner's field of endeavor.

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 that goal. 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 their 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). Moreover, the record does not otherwise demonstrate that the Petitioner has garnered national or international acclaim in the field, and they are one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) and 8 C.F.R. § 204.5(h)(2).

For the reasons discussed above, the Petitioner has not demonstrated their 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.