U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19518381

Date: FEB. 24, 2022

Appeal of Nebraska Service Center Decision

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

The Petitioner, a visual artist and designer, 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 although the Petitioner satisfied at least three of the initial evidentiary criteria, as required, he did not show his sustained national or international acclaim and demonstrate that he is among that small percentage at the very top of the field of endeavor.

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)(A) 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 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) (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).

II. ANALYSIS

A. Evidentiary Criteria

Because the Petitioner has not claimed or established 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 Director determined that the Petitioner met three of the claimed evidentiary criteria relating to published material at 8 C.F.R. § 204.5(h)(3)(iii), artistic display at 8 C.F.R. § 204.5(h)(3)(vii), and leading or critical role at 8 C.F.R. § 204.5(h)(3)(viii). However, the Director concluded that the Petitioner did not show that he garnered sustained national or international acclaim and that his achievements have been recognized in the field of expertise, demonstrating that he is one of that small percentage who has risen to the very top of the field. On appeal, we will review the totality of the evidence in the context of the final merits determination below.[1]

B. Final Merits Determination

As the Director concluded that the Petitioner submitted the requisite initial evidence, we will evaluate whether he has demonstrated, by a preponderance of the evidence, his sustained national or international acclaim,[2] that he is one of the small percentage at the very top of the field of endeavor,

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[1] *See* 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* 13 (Dec. 22, 2010), https://www.uscis.gov/policymanual/HTML/PolicyManual.html (providing that objectively meeting the regulatory criteria in part one alone does not establish that an individual meets the requirements for classification as an individual of extraordinary ability under section 203(b)(1)(A) of the Act).

[2] *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 14 (stating that such acclaim must be maintained and

and that his achievements have been recognized in the field through extensive documentation. In a final merits determination, we analyze an individual's accomplishments and weigh the totality of the evidence to determine if his successes are sufficient to demonstrate that he has extraordinary ability in the field of endeavor. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20.[3] In this matter, we determine that the Petitioner has not shown his eligibility.

At initial filing, the Petitioner provided a statement indicating:

> Currently, I am the co-owner of [redacted], an architecture company based in [redacted] Venezuela, and one of the most important one in the country, with over 240 architectonic projects in our portfolio – some already built, some in construction, some in the feasibility studies stage and some just ideas in drawing paper pending on client decisions.
>
> We have built winning award houses, buildings, malls, several considered real landmarks in Venezuela. Also, we have developed architectonic projects in South and Central America, the United States and Europe.
>
> But I am a visual artist, as well. During my career, I have demonstrated that my art and my skills as an architect merged.
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> As an artist, I have showcased my artwork in individual and collective exhibitions, during the last 45 years, in different countries and the most renowned galleries in cities such as Barcelona, Madrid, Caracas, Bogota, Miami, San Francisco, among others. Furthermore, I have won awards and distinctions as a visual artist.

Although the Director determined that the Petitioner has received published material about him, displayed in work, and performed in a leading or critical role, the record does not demonstrate that he enjoys a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990).

As it relates to published material, the Petitioner offered about a dozen articles for the period of 2005 – 2018. About half of the articles show published material about him relating to his work, while the other articles either mentions his name one time or reflect coverage of his various art exhibits where he is credited as the artist. While he claimed to have showcased his artwork for the past 45 years, the Petitioner did not present any media coverage of him prior to 2005. Here, the Petitioner did not demonstrate that such press coverage is consistent with the sustained national or international acclaim necessary for this highly restrictive classification. *See* section 203(b)(1)(A) of the Act. Further, the Petitioner did not show how his overall media coverage is indicative of a level of success with being among that small percentage who has risen to the very top of the field of endeavor. *See* 8 C.F.R.

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providing *Black's Law Dictionary's* definition of "sustain" as to support or maintain, especially over a long period of time, and to persist in making an effort over a long period of time).

[3] *Id.* at 4 (instructing that USCIS officers should then evaluate the evidence together when considering the petition in its entirety to determine if the petitioner has established by a preponderance of the evidence the required high level of expertise of the immigrant classification).

§ 204.5(h)(2). Thus, the Petitioner did not establish that the limited media reporting on him and his activities reflect a career of acclaimed work in the field. *See* H.R. Rep. No. 101-723 at 59. The commentary for the proposed regulations implementing section 203(b)(1)(A)(i) of the Act provides that the "intent of Congress that a very high standard be set for aliens of extraordinary ability is reflected in this regulation by requiring the petitioner to present more extensive documentation than that required" for lesser classifications. 56 Fed. Reg. 30703, 30704 (July 5, 1991).[4] Here, the Petitioner's minimal media exposure does not meet this very high standard. The articles, for instance, do not reference the Petitioner as an acclaimed, nationally or internationally recognized artist, acknowledging him among the upper echelon in the field.

Regarding the artistic display of his work, the Petitioner provided evidence of his 20 collective exhibitions and his 12 individual exhibitions. The majority of his exhibitions occurred at art galleries in [redacted] Venezuela with also a few in [redacted] Florida and [redacted] California from 2001 - 2019. Although the Petitioner established that he exhibited his work at artistic exhibitions and showcases, simply displaying one's work, however, does not automatically place one at the very top of the field. *See* 8 C.F.R. § 204.5(h)(2). USCIS has long held that even athletes performing at the major league level do not automatically meet the statutory standards for classification as an individual of "extraordinary ability." *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994). Here, the Petitioner did not demonstrate the significance of his collective or individual exhibitions, such as that his work brought wide praise from critics, drew notable crowds, raised attendance, or was responsible for the success of standings of the events. *See* 56 Fed. Reg. at 30704. Again, the nominal press coverage over the last 20 years, without any evidence of his artwork displayed prior to 2001, does not show his sustained national or international acclaim. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(3). Moreover, the Petitioner's evidence does not distinguish his work from others in his field or show that it reflects a career of acclaimed work in the field. *See* H.R. Rep. No. 101-723 at 59. Further, the Petitioner did not establish that his work garnered a level of attention or was regularly seen at highly reputable venues consistent with being among that small percentage who has risen to the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2).

As it pertains to his leading or critical role, as mentioned earlier, the Petitioner co-owns [redacted] The Petitioner submitted a few articles authored by [redacted] describing some of its architectural projects. In addition, the Petitioner presented evidence showing that [redacted] received awards for various architectural projects. The record also contains evidence of [redacted]'s construction projects and furniture brand, [redacted]. Although the Petitioner claimed to have been working in the field for the past 45 years, he did not document any roles for any other organizations or establishments, nor did he demonstrate that he received a level of attention or recognition from the field based on his work with [redacted] reflecting a career of acclaimed work in the field or a very high standard to present more extensive documentation than that required. *See* H.R. Rep. No. 101-723 at 59 and 56 Fed. Reg. at 30704. Moreover, the Petitioner's evidence does not indicate that he received recognition on a national or international scale, consistent with being among that small percentage at the very top of the field. *See* 8 C.F.R. § 204.5(h)(2). Here, the Petitioner did not establish how his role with [redacted] resulted in widespread acclaim from his field, that he drew significant attention from the greater field, or that the overall field considers

[4] *See also* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 2.

him to be at the very top, garnering with sustained national or international acclaim. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(3).

Beyond the three criteria determined by the Director that the Petitioner satisfied, we consider additional documentation in the record in order to determine whether the totality of the evidence demonstrates eligibility as an individual of extraordinary ability. Here, for the reasons discussed below, we find that the evidence does not establish that the Petitioner has sustained national or international acclaim and is among the small percentage of the top of his field.

As indicated above, the Petitioner presented three awards received by [redacted] Although he co-owns the business, the Petitioner did not demonstrate that he has been individually acknowledged by garnering nationally or internationally recognized prizes or awards for excellence in the field, showing a career of acclaimed work in the field. H.R. Rep. No. 101-723 at 59. Here, the Petitioner did not establish that his personal achievements have been recognized in the field of expertise. *See* section 203(b)(1)(A)(i) of the Act and 8 C.F.R. § 204.5(h)(3). Furthermore, he has not shown, for instance, that he competed against other accomplished visual artists or designers, reflecting that he is one of that small percentage who has risen to the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2).

In addition, regarding his contributions in the field, the Petitioner referenced the same media articles, discussed above, as well as five other materials reviewing and critiquing both his individual collections and [redacted]'s architectural projects. The record also contains evidence of the Petitioner's humanitarian work with organizations. Although the evidence reflects the originality of his work and that it has received some attention, the Petitioner did not demonstrate that he has garnered recognition on a national or international scale, consistent with being among the small percentage at the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2). Moreover, the Petitioner did not establish that the level of media coverage represents impactful or influential contributions in the overall field representing a career of acclaimed work in the field, garnering the required sustained national or international acclaim. *See* H.R. Rep. No. at 59 and section 203(b)(1)(A) of the Act. Furthermore, the Petitioner did not show that his contributions received substantial attention from the field, indicating that he is among the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2) and 56 Fed. Reg. at 30704. While his charitable work with various organizations is admirable, the Petitioner did not demonstrate how his humanitarian work contributes to a career of acclaimed work in the field.

The record as a whole, including the evidence discussed above, does not establish the Petitioner's eligibility for the benefit sought. Here, the Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than those progressing toward the top. *See Price*, 20 I&N Dec. at 954 (concluding that even major league level athletes do not automatically meet the statutory standards for classification as an individual of "extraordinary ability,"); *Visinscaia*, 4 F. Supp. 3d at 131 (internal quotation marks omitted) (finding that the extraordinary ability designation is "extremely restrictive by design,"); *Hamal v. Dep't of Homeland Sec. (Hamal II)*, No. 19-cv-2534, 2021 WL 2338316, at *5 (D.D.C. June 8, 2021) (determining that EB-1 visas are "reserved for a very small percentage of prospective immigrants"). *See also Hamal v. Dep't of Homeland Sec. (Hamal I)*, No. 19-cv-2534, 2020 WL 2934954, at *1 (D.D.C. June 3, 2020) (citing *Kazarian,* 596 at 1122 (upholding denial of petition of a published theoretical physicist specializing in non-Einsteinian theories of gravitation) (stating that "[c]ourts have found that even

highly accomplished individuals fail to win this designation")); *Lee v. Ziglar*, 237 F. Supp. 2d 914, 918 (N.D. Ill. 2002) (finding that "arguably one of the most famous baseball players in Korean history" did not qualify for visa as a baseball coach). While the Petitioner need not establish that there is no one more accomplished to qualify for the classification sought, the record is insufficient to demonstrate that he has sustained national or international acclaim and is among the small percentage at the top of his field. *See* section 203(b)(1)(A)(i) of the Act and 8 C.F.R. § 204.5(h)(2).

C. O-1 Nonimmigrant Status

We note that the record reflects that the Petitioner previously received O-1 status, a classification reserved for nonimmigrants of extraordinary ability. Although USCIS has approved at least one O-1 nonimmigrant visa petition filed on behalf of the Petitioner, the prior approval does not preclude USCIS from denying an immigrant visa petition which is adjudicated based on a different standard – statute, regulations, and case law. Many Form I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108, *aff'd*, 905 F. 2d at 41. Furthermore, our authority over the USCIS service centers, the office adjudicating the nonimmigrant visa petition, is comparable to the relationship between a court of appeals and a district court. Even if a service center director has approved a nonimmigrant petition on behalf of an individual, we are not bound to follow that finding in the adjudication of another immigration petition. *See La. Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, at *2 (E.D. La. 2000).

III. CONCLUSION

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.