U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20259190

Date: MAY 26, 2022

Appeal of Nebraska Service Center Decision

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

The Petitioner, a musician, 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, finding that the Petitioner had only satisfied two of the initial evidentiary criteria, of which he must meet at least three. The matter is now before us on appeal.

On appeal, the Petitioner contends that he meets three additional criteria, relating to nationally or internationally recognized prizes or awards, original contributions of major significance in the field, and leading or critical role for organizations or establishments. *See* 8 C.F.R. § 204.5(h)(3)(i), (v), (viii). He maintains that he qualifies for the classification.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).[1] 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

[1] If a petitioner submits relevant, probative, and credible evidence that leads us to believe that the claim is "more likely than not" or "probably" true, it has satisfied the preponderance of the evidence standard. *Chawathe*, 25 I&N Dec. at 375-76.

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 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 the 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). The regulation at 8 C.F.R. § 204.5(h)(4) allows a petitioner to submit comparable material if he or she is able to demonstrate that the criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x) do not readily apply to the individual's occupation.

Where a petitioner meets these initial evidentiary 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, 1119-20 (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, 1343 (W.D. Wash. 2011).

II. ANALYSIS

The Petitioner is a musician who leads the [redacted] music group, [redacted] According to page 4 of the petition, he intends to work as a music producer in the United States and be involved in "studio recording & production; songwriting, live performing and music industry consulting." The Director concluded that the evidence did not show that the Petitioner had received a one-time achievement (that is, a major, internationally recognized award) discussed in 8 C.F.R. § 204.5(h)(3). On appeal, the Petitioner does not challenge this finding. As such, he must satisfy at least three of the ten regulatory criteria listed under 8 C.F.R. § 204.5(h)(3)(i)-(x) to satisfy the initial evidentiary requirements.

The Director concluded that the Petitioner met two of the ten criteria relating to published material at 8 C.F.R. § 204.5(h)(3)(iii) and artistic display at 8 C.F.R. § 204.5(h)(3)(vii). The record supports this determination. Specifically, the record includes an article published on www.Billboard.com that discusses the Petitioner and his music, and the evidence confirms that the website qualifies as a "major trade publication[] or other major media," as referenced in 8 C.F.R. § 204.5(h)(3)(iii). Additionally, the record includes evidence showing that the Petitioner has performed his music in various events

and venues, including on the [redacted] in the [redacted], and at the [redacted] Music and Arts Festival in Florida. He has therefore submitted "[e]vidence of the display of [his] work in the field at artistic exhibitions or showcases," satisfying the criterion under 8 C.F.R. § 204.5(h)(3)(vii).

On appeal, the Petitioner asserts that he also meets the evidentiary criteria under 8 C.F.R. § 204.5(h)(3)(i), (v) and (viii). We will address his claim with respect to the individual evidentiary criteria below.

A. Evidentiary Criteria

> *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).

On appeal, the Petitioner maintains that he meets the prizes or awards criterion because he earned "a qualification of Outstanding or Excellence" at a masterclass with [redacted]' and because he has collaborated with musician [redacted] on the songwriting, recording and production of original song [redacted]" The Petitioner alleges that [redacted]' is "one of the most influential [redacted] artists in the world," and that [redacted] is a "renown [redacted] guitarist, . . . who is a living legend as a guitarist" in [redacted] Spain. According to a 2019 certificate and a document entitled "Course Outline" from [redacted], the Petitioner "attended and successfully completed the following Summer Class(es): Guitar 4 Master Class by [redacted]' and "received a grade of Excellent." The Petitioner also presented documents relating to his song [redacted] including online printouts from www.spotify.com, indicating that the song featured [redacted] as well as another artist named [redacted]

Although the Petitioner claims that these accomplishments confirm his "recognition of excellence in the field of endeavor," he has failed to demonstrate that his grade at a summer program or his collaboration with another musician in one song constitutes a prize or an award as referenced in 8 C.F.R. § 204.5(h)(3)(i). As explained in the Director's decision, the Petitioner has not offered "documentary evidence to establish that completing [a summer program or being involved in a musical collaboration] is a nationally or internationally recognized prize or award for excellence in the field of endeavor. Accordingly, he has not satisfied this criterion.[2]

> *Evidence of the alien'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).

On appeal, the Petitioner asserts that he satisfies the original contributions criterion because his musical work is both original and of major significance in the field. We find the record does not support his contention. To satisfy this criterion, the Petitioner must establish that not only has he made original contributions, but also that those contributions have been of major significance in the field. For example, a petitioner may show that the contributions have been widely implemented throughout

[2] On appeal, the Petitioner argues that he has submitted comparable evidence that satisfies the criterion under 8 C.F.R. § 204.5(h)(3)(i). *See* 8 C.F.R. § 204.5(h)(4). For the reasons we will discuss in Subheading B of this decision, we disagree.

the field, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance.

The record includes a number of reference letters discussing the Petitioner's musical work, claiming that he has created a new genre of music. For example, [redacted], the director of *Billboard Magazine* from its [redacted] hub, states that the Petitioner's "ability in music comes from his capacity to combine different influences of his [redacted] heritage, including [redacted] music . . . , with rock and folk traditions, including [redacted]," [redacted] of [redacted] claims that the Petitioner's "ability to compose and perform highly sophisticated music involving the intersection between multiple genres is unparalleled" and that his "extraordinary ability in mixing musical genres from around the world – including [redacted] – is incredibly rare in the music industry." [redacted], a designer, architect and naturalist, states that the Petitioner has "single handedly created a new genre of music involving musical sounds from [redacted]." [redacted], a music producer associated with the [redacted] Music and Arts Festival, provides that the Petitioner "possesses an extraordinary ability in a rarified music genre of [redacted]," [redacted], a musician and composer, states that the Petitioner's "compositions are rich and eclectic, blending various genres like rock, blues, and folk in a novel way that makes his music unique and different" and that his music "has resulted in the creation of a new sound, an amalgamation of genres from around the world." [redacted], the chief creative officer and managing partner at the [redacted] indicates that the Petitioner has "reached a level of prominence in his very unique music genre that perfectly combines Latin folk with rock music" and that he "is a very successful [] musician and artist in his niche musical genre." These, as well as other reference letters and documents not specifically discussed here, sufficiently confirm that the Petitioner's music – which combines musical styles from different part of the world – is original and unique.

Notwithstanding this finding, however, the Petitioner has not sufficiently shown that his music constitutes "contributions of major significance in the field," as required under 8 C.F.R. § 204.5(h)(3)(v). While the record includes some evidence that the Petitioner's musical talents have been recognized, it is insufficient to confirm that his work has been widely implemented throughout the field, has remarkably impacted or influenced the field, or has otherwise risen to a level of major significance. A 2017 article posted on www.billboard.com discusses the Petitioner's record [redacted] stating that it "shows the growing maturity of a musician who is open to share with artists of different styles" and the record "is a showcase of a music artist who tries to blur the lines with absolute abandon." A similar article was published in *Billboard* [redacted] which states that the Petitioner [redacted] and that his record [redacted] "is the staging of a musical character that seeks to dilute borders with an utterly unbiased mind." The Petitioner has also offered evidence showing that he was interviewed by [redacted] at her podcast, in which he "talk[ed] about his struggles breaking free from the corporate world to pursue his dream of making music." While the documentation concerning media exposure indicates that the Petitioner has received some attention from the field, it

is insufficient to establish that the extent of his influence has risen to the level of "major significance in the field."

Similarly, while the Petitioner and his music group [redacted] have performed in a number of events and venues, including the [redacted] in the [redacted] and the [redacted] Music and Arts Festival, the record is insufficient to demonstrate that the reception of his work supports a finding that it constitutes "major significance in the field." According to the materials in the record, the [redacted] presents to the public free performances of "music, theater, and dance feature emerging and established artists from the [local] area, across the nation, and around the world." This means that artists of different levels of influence in the field are invited to perform for the public on the [redacted] and that being invited to perform on the [redacted] does not necessarily indicate that a particular artist has made contributions of major significance in the field. Likewise, according to [redacted] he invited the Petitioner and his music group [redacted] to perform at the [redacted] Music and Arts Festival, which [redacted] claims to have attracted "over 40,000 attendees," because he was impressed with the Petitioner's "guitar playing skills" and "the quality of his vocals." While [redacted] alleges that the Petitioner's participation in festival "is an incredible honor and evidences [his] superior talents [as] a musical artist," neither the letter nor other evidence in the record confirms that his performances in the festival or any other events or venues resulted in his musical style being widely adopted throughout the field, has remarkably impacted or influenced the field, or has otherwise risen to a level of major significance.

Some of the Petitioner's references allege that his licensing agreement is indicative of his impact in the field. We disagree. The record includes a 2014 licensing agreement, under which the Petitioner (the licensor) allowed [redacted] (the licensee) to "deliver[] [his musical work] in diverse formats . . . and through diverse digital channels . . . such as cell phones and internet," and that the licensee agreed to pay the Petitioner a "royalty percentage." The Petitioner has not submitted additional documentation concerning this licensing agreement, such as the amount of "royalty percentage" compensation he has received, or whether the parties are still under contractual obligations. Regardless, similar to having articles written about him and his work, this licensing agreement shows that the field has noticed the Petitioner, but it falls short of confirming that his musical work is of such caliber that it constitutes "contributions of major significance."[3]

Indeed, some of the Petitioner's references indicate that his musical work of combining different musical styles might one day impact the field in a significant way. For example, [redacted] a music director for a number of orchestras, indicates that the Petitioner "has reached a point in his music career where he is on the verge of achieving worldwide fame for his unquestionably distinctive style and aptitude." [redacted] a film and commercial director, states that he has "no[] doubt that subsequent performers, composers and critics have and will embrace his fusion of electric genres such as folk and rock, spawning a new type of music." [redacted] an entertainment attorney, claims that the Petitioner "is well on his way to becoming a leading light in today's field of [redacted] music, having himself coined a unique expression [redacted] which almost creates a new genre of music." [redacted] a producer and owner of [redacted]

[3] On appeal, the Petitioner submits a September 2021 licensing agreement with [redacted] As this document postdates the filing of the petition in July 2021, it does not demonstrate the Petitioner's eligibility at the time he filed the petition. *See* 8 C.F.R. § 103.2(b)(1) (providing that a petitioner "must establish that he or she is eligible for the requested benefit at the time of filing the benefit request and must continue to be eligible through adjudication").

[redacted] provides that the Petitioner "has created a [redacted] fusion of two vastly different varieties of music [redacted] – and his innovation and creation of a new and different style of music will soon invigorate and change the music scene." These reference letters discuss the potential impact of the Petitioner's work. This criterion, however, requires evidence that his work has already made contributions of major significance in the field. Speculations of his work's potential impact, thus, are insufficient to satisfy this criterion. *See* 8 C.F.R. § 204.5(h)(3)(v).

The opinions of the Petitioner's references are not without weight and have been considered above. However, for the reasons we have discussed above, the letters and other evidence in the record fail to demonstrate that the Petitioner's work constitutes contributions of "major significance" in the field. U.S. Citizenship and Immigration Services (USCIS) may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding an individual's eligibility for the benefit sought. *Id.* The submission of reference letters supporting the petition is not presumptive evidence of eligibility; USCIS may, as we have in this case, evaluate the content of those letters as to whether they support the individual's eligibility. *See id.* at 795-96. Thus, the content of the references' statements are important considerations. The record, including the reference letters, does not sufficiently establish that the Petitioner's original work has been unusually influential, has substantially impacted the field, or has otherwise risen to the level of musical contributions of major significance. As such, he has not demonstrated that he meets this regulatory criterion. *See Visinscaia*, 4 F. Supp. 3d at 134-35 (upholding a finding that a ballroom dancer had not met this criterion because she did not demonstrate her impact in the field as a whole).

> *Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.* 8 C.F.R. § 204.5(h)(3)(viii).

On appeal, the Petitioner argues that he meets this criterion because he was the "Project Leader and Marketing Strategist" for [redacted] ([redacted] [redacted]." He claims that he was involved in the "completion and success of worldwide campaigns [redacted] [redacted] [redacted] and [redacted]"

Letters from employers, attesting to an employee's role in the organization, must contain detailed and probative information that specifically addresses how the person's role for the organization or establishment was leading or critical. *See* 6 *USCIS Policy Manual* F.2(B)(2) (including an appendix that discusses all ten criterion), https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-2. Additionally, in determining whether an organization or establishment has a distinguished reputation, the relative size or longevity of an organization or establishment is not in and of itself a determining factor. Rather, the organization or establishment must be recognized as having a distinguished reputation.

As supporting evidence, the Petitioner offers a letter from [redacted] who claims in an August 2021 letter that while working for [redacted] he "was leading the Latin American promotion of [redacted] . . . and also planning for [redacted] [redacted]" [redacted] states that the Petitioner assisted him in both the [redacted] campaign and the [redacted] and was "in charge of the integration of

digital/online strategies, market research and comparative analysis of musical festivals." He alleges that "[d]ue in large part of [the Petitioner's] leading efforts and the rest of an international team, [redacted] became the best and fastest selling [redacted] in the digital age," and that the Petitioner's "craft and critical role in planning and executing [redacted] was equally as impressive." The record includes other documents relating to both the campaign and the festival.

The Petitioner has not demonstrated that [redacted] or one of its departments or divisions qualifies as an organization or establishment that has a distinguished reputation. *See* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(2) (appendix). Merriam-Webster's online dictionary defines "distinguished" as "marked by eminence, distinction, or excellence or befitting an eminent person." *See* www.merriam-webster.com/dictionary/distinguished. On appeal, the Petitioner submits evidence concerning [redacted] including a *Variety* article, materials posted on www.WallStreetWomenForum.com and www.wmg.com, indicating that [redacted] is "a former talent-management and current investment company" "dedicated to innovative growth-stage businesses in the consumer, media and technology sectors," and that it had "worked closely with artists including [redacted]." These documents, as well as those not specifically mentioned, show that [redacted] had worked with certain well-known performers, they are, however, insufficient to support a finding that its reputation, or the reputation of one of its departments or divisions, is "marked by eminence, distinction, or excellence." As such, the Petitioner has not shown that [redacted] or one of its departments or divisions has a distinguished reputation.

Moreover, the evidence is insufficient to establish that the Petitioner, based on his involvement in one campaign and one festival, was a leader within [redacted] a division or a department within [redacted], or that he contributed in a way that is of significant importance to the outcome of [redacted] activities or those of a division or department within [redacted]. *See* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(2) (appendix). The Petitioner's title in [redacted] and his associated duties, are insufficient to show that he was a leader. Similarly, while he might have played a significant role in certain aspects – including "integration of digital/online strategies, market research and comparative analysis of musical festivals – of the [redacted] campaign and the [redacted] he has failed to explain the significance of his work to the [redacted] as a whole or to a [redacted] division or department. Without additional corroborating evidence demonstrating his leading or critical role for [redacted] or one of its divisions or departments, and establishing [redacted] or one of its divisions or departments has a distinguished reputation, he has not satisfied this regulatory criterion.[4]

B. Comparable Evidence

On appeal, the Petitioner claims that he has submitted comparable evidence showing that he meets the nationally or internationally recognized prizes or awards criterion under 8 C.F.R. § 204.5(h)(3)(i). The regulation at 8 C.F.R. § 204.5(h)(4) addresses comparable evidence and allows a petitioner the opportunity to submit "comparable" evidence to establish his or her eligibility, if USCIS determines that a criterion does not readily apply to the individual's occupation. *See* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(2) (appendix). In this case, the Petitioner has not submitted sufficient evidence

[4] Additionally, we note that the Petitioner indicated on page 4 of the petition that he intends to work as a music producer in the United States, claiming extraordinary ability as a musician and a musical producer. He, however, has explained how his experience in business strategies, marketing and market research relates to the field in which he claims extraordinary ability.

showing that the nationally or internationally recognized prizes or awards criterion under 8 C.F.R. § 204.5(h)(3)(i) does not readily apply to his occupation as a musician and music producer. The fact that he has not received such prizes or awards is insufficient to support a finding that the criterion "do[es] not readily apply to the []occupation." *See* 8 C.F.R. § 204.5(h)(4). Moreover, the Petitioner has not demonstrated that his successful completion of a summer masterclass program or his musical collaboration with another musician is truly comparable to nationally or internationally recognized prizes or awards for excellence in the field of endeavor. *See id.* Based on these reasons, the Petitioner has not established that he may rely on comparable evidence to satisfy the criterion under 8 C.F.R. § 204.5(h)(3)(i). *See also* 8 C.F.R. § 204.5(h)(4).

C. O-1 Nonimmigrant Status

We note that the record reflects that the Petitioner 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 immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. *See, e.g., Sunlift Int'l v. Mayorkas, et al.*, 2021 WL 3111627 (N.D. Cal. 2021); *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dep't of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41, 42 (2d Cir. 1990). Furthermore, our authority over the USCIS service centers, the offices adjudicating nonimmigrant visa petitions, 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

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 listed under 8 C.F.R. § 204.5(h)(3)(i)-(x). As a result, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F. 3d at 1119-20. Nevertheless, we note 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 individuals already at the top of their respective fields, rather than for individuals progressing toward the top. Here, the Petitioner has established that he is a musician who has gained some recognition for his work. But he has not shown that this recognition rises to the required level of 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 is one of the small percentage of individuals who

have risen to the very top of the field of endeavor. *See* Section 203(b)(1)(A) of the Act; 8 C.F.R. § 204.5(h)(2).

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

ORDER: The appeal is dismissed.