U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27007829

Date: DEC. 14, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner seeks classification as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish that the Petitioner had satisfied at least three of ten initial evidentiary criteria, and that he will continue to work in his claimed area of expertise in the United States, as required. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (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)(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). Congress set a very high benchmark for aliens of extraordinary ability by requiring that the Petitioner demonstrate "sustained national or international acclaim" by presenting "extensive documentation" of the alien's achievements. 56 Fed. Reg. 30703, 30704 (Jul. 5, 1991). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate 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, 1121 (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 Amin v. Mayorkas*, 24 F.4th 383, 394 (5th Cir. 2022).

II. ANALYSIS

The Petitioner, a native and citizen of Kazakhstan, claims to be a singer and composer, who has authored musical albums, won awards, and performed at international venues. He entered the United States in June 2021 as a B-2 nonimmigrant visitor.

A. Willful Misrepresentation of Material Facts

Before we discuss the merits of the appeal and the underlying petition, we begin with a finding that the Petitioner willfully misrepresented material facts in this proceeding.

Misrepresentation of a material fact may lead to multiple consequences in immigration proceedings. Any noncitizen who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under the Act is inadmissible. Section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i).

Under Board of Immigration Appeals precedent, a material misrepresentation is one which "tends to shut off a line of inquiry which is relevant to the alien's eligibility, and which might well have resulted in a proper determination that he be excluded." *Matter of S- and B-C-*, 9 I&N Dec. 436, 447 (BIA 1961). A willful misrepresentation requires that the individual knowingly make a material misstatement to a government official for the purpose of obtaining an immigration benefit to which one is not entitled. *Sergueeva v. Holder*, 324 Fed. Appx. 76 (2d Cir. 2009) (citing *Matter of Kai Hing Hui*, 15 I&N Dec. 288, 289-90 (BIA 1975). Material misrepresentation requires only a false statement that is material and willfully made. *See* 9 FAM 40.63 N2; *see also Matter of Tijam*, 22 I&N Dec. 408, 424 (BIA 1998) (*en banc*) (Rosenberg, concurring). The term "willfully" means knowing and intentionally, as

distinguished from accidentally, inadvertently, or in an honest belief that the facts are otherwise. *See Matter of Healy and Goodchild*, 17 I&N Dec. 22, 28 (BIA 1979).

As evidence of the Petitioner's receipt of lesser nationally or internationally recognized prizes or awards under the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i), he initially submitted cell phone pictures of himself holding what appears to be a certificate of an award given to him in New York for best composer. The Director questioned the authenticity of this award since the record lacked information about the award and the awarding organization. Furthermore, the cell phone picture appeared staged and included the caption "first time in New York." This gave the impression that this was a pictured staged while the Petitioner was on vacation in the U.S. (per his non-immigrant B1/B2 visa).

Similarly, the Petitioner also submitted pictures of himself holding other award certificates or statuettes, yet these photos displayed documents written in a foreign language (un-translated) and/or illegible text. The record was not supported by information about these awards and the organizations that bestowed them to him.

The Director issued a notice of his intention to deny the petition (NOID) which discussed his concerns with this evidence and requested more information about these awards, such as information about the organizations that bestowed these awards to the Petitioner, documentation from the awarding organizations establishing his receipt of these awards, major media articles about the awarding events, and major media articles establishing that these are prestigious awards or prizes recognizing musicians or singers. In the NOID, the Director also requested that the Petitioner submit high resolution color photos of the front and back of the actual award (not pictures of a cell phone screen). While the Petitioner provided a respond to the NOID, he did not provide the requested evidence about these awards. "Failure to submit requested evidence which precludes a material line of inquiry shall be grounds for denying the [petition]." 8 C.F.R. § 103.2(b)(14).

The Director denied the petition, in part, because the Petitioner submitted evidence that appeared to be fabricated in order to establish that he qualifies as an individual of extraordinary ability. We issued our own NOID in November 2023 taking note of the irregularities in the evidence provided by the Petitioner in the record before the Director and gave the Petitioner another opportunity to provide evidence to rebut this information. 8 C.F.R. § 103.2(b)(16)(i). While the Petitioner responded to our NOID, he did not provide a narrative explanation, supported by probative evidence to overcome our concerns that the evidence provided about the Petitioner's awards was fabricated. "Failure to submit requested evidence which precludes a material line of inquiry shall be grounds for denying the [petition]." 8 C.F.R. § 103.2(b)(14). The information in the falsified awards is material to the petition because it relates to eligibility for the criteria under 8 C.F.R. § 204.5(h)(3).

Additionally, the Director denied the petition because the Petitioner did not submit clear evidence that he was coming to the United States to continue working in his claimed area of expertise, such as prearranged commitments and a statement detailing his plans to establish how he will continue to work in his profession in the U.S., as required by 8 C.F.R. 204.5(h)(5). The Director noted in the denial that he had requested documentary evidence establishing such in the NOID but the Petitioner was not responsive to his request. 8 C.F.R. § 103.2(b)(14).

In our NOID we noted that the Petitioner provided evidence on appeal to address this deficiency in the record. Specifically, he offered promotional material about a film production entitled '[redacted]," (G-T-) which suggested that American film producer [redacted] (Mr. F-) is producing this film. The material highlights that Mr. F was the producer of the [redacted] films. We observed that the Petitioner filed this appeal in February 2023 and provided evidence about this film project at that time, including promotional material for this film, an executed January 2023 "composer agreement" between the Petitioner and [redacted] (Mr. Z-) requiring the Petitioner to compose the musical score for G-T-, and an executed January 2023 "composer-singer deal term sheet" between the Petitioner and Mr. Z-s' production company, [redacted], which requires a payment of $50,000 to the Petitioner and compensation to him for certain travel expenses so that he can complete this work. The contractual documents indicated that the Petitioner will be paid $10,000 either upon the signing of these agreements or when he starts work on the musical score. $25,000 would be paid to him when recording of the score commenced, followed by $15,000 when his services were complete. The agreements called for final recording services for the musical score to start on November, 1, 2023 and conclude on December 3, 2023.

We noted that Mr. F- passed away in November 2022, months prior to the Petitioner's submission of material about this film project in support of the appeal. *See* Mike Barnes, *[Mr. F-]*, [redacted]. The Hollywood Reporter (November 21, 2022), https://www.hollywoodreporter.com/movies/movie-news/[redacted]. According to this article, Mr. F- passed away the day before the article was published. The article displays a picture of Mr. F- captioned as being provided by Mr. F-'s widow to the Hollywood Reporter. Notably this picture is also displayed in the film's promotional material that the Petitioner submitted in support of the appeal.

In our NOID we explained that the submission of this material - which states that Mr. F- is to produce the G-T- film months after he passed away - raises questions about the credibility of the Petitioner's documentation. Based on our review of the record it appeared that this evidence was fabricated by the Petitioner to establish that he had prearranged commitments to provide services in his field of endeavor. We informed the Petitioner that he must resolve this inconsistency and ambiguity in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). We notified the Petitioner that based in part on this derogatory information, we intended to dismiss the appeal, and we gave him an opportunity to submit additional evidence to rebut this information. 8 C.F.R. § 103.2(b)(16)(i).

We asked the Petitioner to provide affidavits from the G-T- film's other producers listed in the promotional materials, (Mr. A- and Mr. Z-), in which they were to: (1) describe the nature of the Petitioner's involvement in the G-T- film project, (2) address their plans for producing this film without Mr. F-, (3) give the current status of the film project, and (4) provide copies of current promotional material for the film. Additionally, we asked for documentary evidence of the $10,000 that was to be paid to the Petitioner per the submitted composer agreements on or about January 2023, including a copy of his bank statements and other documents to show his receipt of these funds and their source. We noted the composer agreements indicated that the Petitioner will be responsible for costs incurred to develop and deliver the film's musical score, including the costs to obtain musicians, studio time, mixing, tape and other materials. We asked for a listing of the costs that the Petitioner has incurred to date under this agreement, documentary evidence of his payment of those costs, and

copies of his executed contracts with others, such as the music studios and musicians needed to complete the work. In response to the NOID, the Petitioner provided a statement describing the current status of the G-T- film project, as follows:

> In the film industry, there are various types of producers, each with distinct roles. Some focus solely on development, others on post-production, while some oversee all stages of production. [Mr. F-'s] involvement in a project often resulted in a successfully packaged film, uniquely positioned for optimal distribution. . . . At the time of his passing, [Fr. F-] had eight projects in development. His name remains attached to each of these, and they are set to be released posthumously. His family will receive royalties, as these films will still be recognized as '[Mr. F-] pictures.'"

While the Petitioner asserts that the G-T- project is proceeding without Mr. F- he did not provide contemporaneous, documentary evidence to show that G-T- is an ongoing film production. We specifically, asked for updated materials about the development of the G-T film, including affidavits from the other film producers who are overseeing the creation of the film discussing the Petitioner's involvement in this project, documentation of the remittance of payment to the Petitioner for composing the musical score for the film and evidence of his payment of project expenses in accordance with his submitted "composer agreement" with Mr. Z-, and current promotional materials for G-T-. However, the Petitioner has not provided documentary evidence to support his assertions that G-T- is currently in film production, and that he is engaged as a composer to produce the musical score for G-T-, as asserted on appeal.

It is the petitioner's responsibility and burden to resolve any inconsistencies in the record with independent objective evidence and attempts to explain or reconcile such inconsistencies will not suffice without competent objective evidence pointing to where the truth, in fact, lies. *See Matter of Ho*, 19 I&N Dec. at 582. The Petitioner's response to the NOID does not meet this standard. We conclude, therefore, that the material presented about the G-T- film project, including the G-T- promotional materials, power point presentation, composer agreement, and the composer-singer deal term sheet, were falsified in order to support the Petitioner's fraudulent claims on appeal. The information in the falsified G-T- documentation is material to the petition because it was submitted to establish how the Petitioner will continue to work in his profession in the U.S. as required by 8 C.F.R. 204.5(h)(5).

For the above reasons, we find that the Petitioner willfully misrepresented material facts in seeking to procure a benefit under the Act. Our finding may render him inadmissible in future proceedings where admissibility is an issue. For efficiency's sake, we incorporate the above discussion and analysis regarding this derogatory information into each of the bases in this decision for dismissing the appeal.

B. Evidentiary Criteria

Because the Petitioner has not indicated or shown that he received a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x). The Director reviewed the evidence offered initially and in response to his NOID and determined that while the Petitioner provided evidence to meet five of the criteria, *awards* (i), *membership* (ii), *published material* (iii), *judging* (iv), and *contributions of major significance* (v), he did not meet any

of them. In the denial, the Director provided a detailed analysis and explanation addressing these criteria individually and explained why the evidence provided was insufficient to satisfy them.

On appeal, the Petitioner generally discusses his career accomplishments, claiming without supporting probative evidence that he is "the author of 300 works that make a great contribution to the development of music and creativity in the Republic of Kazahstan," has received awards, and has performed internationally in countries such as France, Germany, and Malaysia. However, the Petitioner does not directly address this critical aspect of the Director's decision - i.e., he fails to identify a specific error in the Director's decision when he determined that the Petitioner did not meet at least three of the ten regulatory criteria at 8 C.F.R. § 204.5(h)(3).

The reason for filing an appeal is to provide an affected party with the means to remedy what they perceive as an erroneous conclusion of law or statement of fact within a previous proceeding. *See* 8 C.F.R. § 103.3(a)(l)(v). By presenting only generalized statements of eligibility without explaining the specific aspects of the Director's decision they consider to be incorrect, the Petitioner has failed to identify the basis for contesting this requirement on appeal. Since the Petitioner did not address this issue with specificity on appeal, we deem the issue waived and affirm the Director's conclusion that the Petitioner did not satisfy any of the criteria at 8 C.F.R. § 204.5(h)(3). *Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (citing Matter of R-A-M-, 25 I&N Dec. 657, 658 n.2 (BIA 2012) and finding when a filing party mentions an issue without developing an argument, the issue is deemed waived).

The Petitioner has not submitted the required initial evidence of either a one-time achievement or probative documentation that meets at least three of the ten lesser criteria. As a result, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. Nevertheless, we advise that we have reviewed the record in the aggregate, concluding that it does not support a conclusion that the Petitioner has established the acclaim and recognition required for the classification sought.

C. Coming to Work in the Field of Expertise

The regulation at 8 C.F.R. § 204.5(h)(5) requires "clear evidence that the alien is coming to the United States to continue work in the area of expertise. Such evidence may include letter(s) from prospective employer(s), evidence of prearranged commitments such as contracts, or a statement from the beneficiary detailing plans on how he or she intends to continue his or her work in the United States."

The Petitioner initially stated in Part 6 of the petition that he plans "to open my own production company. Multiply my achievements in the art. Produce songs [a]s an artist, director." In his NOID, the Director observed that the Petitioner did not submit documentary evidence of prearranged commitments or offer statements detailing his prospective plans to continue to work in his field. The Director asked for documentary evidence establishing such. In response, the Petitioner offered a new plan, indicating that he intends to "open an [a]rt [s]chool for Kazakh children. To study national songs, national cultural lyrics, national cultural art support center. Also, as a singer/people's artist I'm usually invited to charity concerts, events, celebrations to perform. . ."

The Director denied the petition, concluding that the Petitioner did not submit documentary evidence of prearranged commitments or otherwise sufficiently detail his work prospective work plans to meet the "clear evidence" requirements at 8 C.F.R. § 204.5(h)(5).

On appeal, the Petitioner newly asserts that he is organizing "a [musical] tour called [redacted] which will feature his music during live performances in the United States and in Europe. We acknowledged his plans in our NOID and asked the Petitioner to provide documentary evidence to illustrate the steps he has taken to organize this tour, including its source of funding, tour itinerary, and the contracts that he has executed with production companies to support his tour operations in the U.S. and abroad. In his December 2023 response to the NOID, the Petitioner avers:

> Regarding my musical tour call '[redacted]" in the United States and European countries: Everything remains in effect, but due to the pandemic, many preliminary agreements have been postponed for unknown period including on my initiative. Since in order to perform this tour, I need to be able to travel from [the United States to Europe] and be able to return to the United States. I was waiting for my permits/documents and relied on this factor to plan the tour with exact dates, countries, cities.

Notably, the Petitioner has not provided evidence to show that his ability to travel within the United States and abroad is being prospectively curtailed by domestic and international travel restrictions related to the Covid-19 pandemic. Further, USCIS records reflect that the Petitioner received authorization to work in the United States in September 2022 (months prior to filing the appeal) and this authorization continues through September 2024. Therefore, he has been authorized to be employed as a touring concert performer in the United States for well over a year, should such an opportunity arise. USCIS also issued a travel document to him in February 2023 to facilitate his travel abroad; thus, he has been free to travel abroad and then return to the United States since that time. Therefore, we find the Petitioner's assertions that pandemic travel restrictions and the unavailability of work and travel permits have delayed his ability to plan and execute his concert tour to be incredible. Without supporting evidence to the contrary, it appears that the Petitioner may have offered fictitious plans to organize an international '[redacted]" musical tour as a sham attempt on appeal to meet the evidentiary requirements at 8 C.F.R. § 204.5(h)(5). *Matter of Ho, supra.*

Here, the Petitioner initially stated that he intended to start his own musical production company, later he claimed that he will instead open a children's art school. On appeal, he asserts that he is planning to embark on a musical tour to perform across the United States and in Europe but did not provide probative evidence to support his assertions. He also submitted falsified documents claiming to be employed as a musical composer for the G-T- film production. We conclude that the Petitioner's far-flung assertions about his future plans to continue to work in his claimed area of expertise are not supported by probative, documentary evidence sufficient to meet the "clear evidence" requirement at 8 C.F.R. § 204.5(h)(5). *Matter of Chawathe*, 25 I&N Dec. at 376.

A petition can only be properly approved upon a determination that the facts stated in the petition are true. *See* section 204(b) of the Act, 8 U.S.C. § 1154(b). Though requested in the Director's NOID and in our own NOID, the above inconsistencies, discrepancies, and contradictory statements have not been resolved by the submission of independent, objective evidence, and diminish the reliability of the

Petitioner's claim that he is coming to the United States to work as a singer and composer. A mere explanation is not the independent objective evidence contemplated by *Matter of Ho*, and we find the Petitioner's offered explanations unpersuasive. The record does not contain clear evidence that the Petitioner will continue work in his area of expertise in the United States.

III. CONCLUSION

The Petitioner has not demonstrated that he qualifies as an individual of extraordinary ability and will continue to work in his area of expertise in the United States. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. Accordingly, the Petitioner has not established eligibility for the immigration benefit sought. We also find that the Petitioner has willfully misrepresented material facts directly relating to the immigration benefits sought in this petition.

ORDER: The appeal is dismissed.