U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28949852

Date: NOV. 30, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a hair stylist, 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 (EB-1) classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner had satisfied at least three of the ten initial evidentiary criteria for this classification, as required. The matter is now before us on appeal.

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). 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 their 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 they 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).

II. ANALYSIS

The Petitioner is a hair stylist who has participated in fashion-related competitions and performed work as a hair stylist in support of film productions abroad, among other things. He provided evidence such as a sublease for a hair stylist chair from a salon as his means to provide hair styling services to his customers, and he intends to continue working as a hair stylist in the United States should this petition be approved.

A. Evidentiary Criteria

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). The Director determined that the Petitioner only met the plain language requirements of the two evidentiary criteria relating to awards at 8 C.F.R. § 204.5(h)(3)(i) and leading or critical role at 8 C.F.R. § 204.5(h)(3)(viii).

On appeal, the Petitioner asserts that he also meets the 8 C.F.R. § 204.5(h)(3) evidentiary criteria relating to published material (iii), judging (iv), and original contributions (v). He does not assert eligibility under the membership (ii), authorship (vi), display of work (vii), high salary (ix), or commercial success (x) criteria. Therefore, we deem these issues to be waived and will not address these criteria in our decision. *See, e.g.*, *Matter of M-A-S-*, 24 I&N Dec. 762, 767 n.2 (BIA 2009). While we may not discuss every document in the record, we have reviewed and considered each one. Based on our de novo review, we conclude that the Petitioner has not established that he meets the requirements of at least three criteria.

> *Evidence that the individual 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)

In general, a leading role may be evidenced from the role itself, and a critical role is one in which an individual is responsible for the success or standing of the organization or establishment. To meet this criterion, the Petitioner must establish that he has performed in a leading or critical role for an organization, establishment, or a division or department of an organization or establishment.

For a leading role, we look at whether the evidence establishes that the person is (or was) a leader within the organization or establishment or a division or department thereof. A title, with appropriate matching duties, can help to establish that a role is (or was), in fact, leading. For a critical role, we determine whether the evidence establishes that the person has contributed in a way that is of significant importance to the outcome of the organization or establishment's activities or those of a division or department of the organization or establishment. *See generally* 6 *USCIS Policy Manual* F.2, https://www.uscis.gov/policy-manual.

The Petitioner contends that he meets this criterion through his role as a guest lecturer at the Instituto [redacted] (I-) located in Florida, and as a hair stylist for films produced by [redacted] (L-) a film production studio located in Russia. The Director determined that the Petitioner met this criterion, however we withdraw the Director's determination for the following reasons.

With regard to his involvement with I-, the Petitioner references letters from [redacted] (Ms. M-), who is said to be employed by I- as a fashion styling professor. Ms. M- states that she invited the Petitioner to be a guest lecturer "on occasion" in order to share "his views and approaches to creative styling [which] showed the students how to 'feel the fashion,' integrating the spirit of style into the experience of learners on a daily basis, [and to share] his knowledge of European fashion trends and the way they can be combined with each other or with other cultural influences. . . ." Ms. M- does not indicate whether the Petitioner has ever been employed by I- nor does she explain how his leadership and critical role contributions to I- compares to others holding positions of authority and responsibility within the organization. While we acknowledge that I- may enjoy a distinguished reputation as an international fashion school, without more, the evidence falls short in establishing how the Petitioner's involvement as a guest lecturer at I- translates into his performing a leading or critical role for the I- organization, itself.

Turning to his activities for the L- film production studio, the Petitioner provides a letter from [redacted] (Ms. T-), who worked with the Petitioner as an actress on films produced by L-. Ms. T- states that "during the Soviet era, [L-] was the second largest production branch of the Soviet film industry, which incorporated more than 30 film studios located across the former Soviet Union." The Petitioner also provided two pages from L-'s website which indicate that it is still producing films in Russia. However, the record does not substantiate that L- possesses a distinguished reputation as a film studio in the film production industry.

Ms. T- speaks favorably of the hair styling work performed by the Petitioner in the film productions that they were mutually involved with, noting for instance that he "is a creative thinker in the first turn, [] always organized, responsible and diligent, and related well to all the actors and film crew members," and worked "as a hair and fashion stylist for major Russian celebrity actors at [L-]." She notes that she personally employed him as her own hair stylist for an appearance at an awards ceremony. However, the record lacks contemporaneous, documentary evidence to establish the Petitioner's employment, if any, by L-, nor has the Petitioner provided evidence from the L-

organization itself to detail the specifics of his role and responsibilities there. Without more, we conclude that this evidence is of little probative value to the issue at hand. *Matter of Chawathe*, 25 I&N Dec. at 376. Here, the Petitioner has not provided sufficient evidence demonstrating that he meets the plain language requirements of this criterion.

> *Evidence of the individual's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specialization for which classification is sought.* 8 C.F.R. § 204.5(h)(3)(iv)

In order to meet the plain language requirements of this criterion, a petitioner must show that they have not only been invited to judge the work of others, but also that they actually participated in the judging of the work of others in the same or allied field of specialization. *See* 6 *USCIS Policy Manual* F.2, *supra*.

The Director determined that the evidence provided did not adequately support the Petitioner's claim that he has judged the work of others in the field through acting as an "examinations" judge of students' work at I-. On appeal, the Petitioner asserts that he previously "provided evidence of his invitation to join the panel and his active participation as a jury member." He points to Ms. M-'s May 2022 letter and internet materials about I-, asserting that this evidence "clearly established" the Petitioner's eligibility for this criterion.

In her letter, Ms. M- explains that the Petitioner was "invited to judge the works of [f]ashion students at the end of their educational journey (as their final step to obtain their diploma). [He] was invited as a judge in February 2020 as the hair stylist expert alongside a famous professor of fashion photography [] and many other professional judges who were to express their opinions on the students' full fashion work." However, the record does not include contemporaneous evidence confirming his invitation to act as a judge at this or other events. Additionally, there is insufficient documentary evidence in the record corroborating the Petitioner's participation as a judge of the work of others for I- or at events sponsored by other entities.

Further, the submitted internet-based information about I- makes no mention of the examinations that the Petitioner contends he judged. Here, the record lacks evidence as to what I-'s February 2020 "full fashion" examinations entailed, including the criteria considered by judges in selecting winners of the examinations if the judging involved evaluating competitive entries by diploma candidates, or the scoring mechanisms used to otherwise determine the candidates had passed the examinations. Without additional probative information, we cannot determine whether judging this event entailed judging the work of others in the Petitioner's claimed field of expertise or an allied field. In evaluating the evidence, the truth is to be determined not by the quantity of evidence alone but by its quality. *Matter of Chaw*athe, 25 I&N Dec. at 376. For these reasons, we conclude the Petitioner does not meet this criterion.

> *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).

To determine whether the Petitioner has submitted evidence that meets the plain language of this criterion, we first determine whether the published material was related to the person and the person's specific work in the field for which classification is sought. The published material should be about the person, relating to the person's work in the field, not just about the person's employer and the employer's work or another organization and that organization's work.

Second, USCIS determines whether the publication qualifies as a professional publication, major trade publication, or major media publication. In evaluating whether a submitted publication is a professional publication, major trade publication, or major media, relevant factors include the intended audience (for professional and major trade publications) and the relative circulation, readership, or viewership (for major trade publications and other major media). *See* 6 *USCIS Policy Manual* F.2, *supra*.

In support of this criterion, the Petitioner submitted articles about his work, and the circulation statistics for the publications where they appeared. The Director discussed the evidence and determined that it was insufficient to demonstrate the Petitioner's eligibility for this criterion. Based on our review of the record, we agree that the Petitioner has not established the articles about his work and accomplishments were published in professional, major trade, or major media publications.

On appeal, the Petitioner asserts that the Director erred in analyzing the evidence submitted under this criterion, noting "USCIS should focus on the circulation of the publication, its intended audience if it is a professional or trade publication, or the editorial influence of the media source, rather than solely [on] whether the publication is national in scope." Contrary to the Petitioner's assertion, the Director did not evaluate whether these publications enjoyed a *national* readership, either in her request for evidence (RFE) or in the denial. Rather, she asked for evidence in his RFE about the comparative circulation of the publications to other publications, and for additional information about the nature of their intended audiences. But the Petitioner did not sufficiently address these aspects, either in his RFE response or in the appeal brief. "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).

On appeal, the Petitioner references a 2006 article in the '[redacted]' (K-P-) newspaper, which discusses among other things, the Petitioner's first place showing in a hairstyling competition. The documentation included evidence reflecting a 26,000-copy circulation for K-P- in that year. In response to the Director's RFE, he also submitted material from of K-P-'s website which identifies the number of digital visits to its website in 2022, 16 years after the article was published. Similarly, he points to another 2006 article published in the [redacted] (T-P-) newspaper which discusses the Petitioner's competitive achievements as a member of a college team. T-P- had a circulation of 3,500 at that time and the Petitioner also provided evidence of T-P-'s 2022 website visit numbers.

We conclude this evidence does not sufficiently illustrate that the level of circulation for either of these publications in 2006 was indicative of a major media publication, nor does it establish the intended audience of these publications. Therefore, the Petitioner has not demonstrated that these newspapers constitute qualifying publications in order to meet the plain language requirements of this criterion.

The Petitioner also references a previously submitted un-dated article that appeared in [redacted] (M-M-). During this interview, the Petitioner discusses the hair stylist competitions that he participated

in during the roughly six-year time period from 2006 to 2011. In the article, he shares that he no longer competes in such contests but still enjoys working in the "Art" style. The limited information in the record about M-M- suggests that it is an internet-based Russian language periodical published in Florida, with a viewership of less than 5,000 visits a month. Without more, this material does not show that this article appeared in a qualifying publication. *Chaw*athe, *supra*.

This evidentiary criterion has not been met.

B. Summary and Reserved Issue

The record does not establish that the Petitioner meets at least three of the initial evidentiary criteria discussed above. As such, the Petitioner has not met the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3). Detailed discussion of the remaining criteria at 8 C.F.R. § 204.5(h)(v) cannot change the outcome of the appeal. Therefore, we reserve and will not address this remaining issue. *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach); *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).

C. Prior O-1 Approval

We acknowledge that the Petitioner has been the beneficiary of an approved O-1 petition. 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 statute, regulations, and case law. The nonimmigrant and immigrant categories have different criteria, definitions and standards for persons working in the arts. "Extraordinary ability in the field of arts" in the nonimmigrant O-1 category means distinction. 8 C.F.R. § 214.2(o)(3)(ii). But in the immigrant context, "extraordinary ability" reflects that the individual is among the small percentage at the very top of the field.

Finally, 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 by a decision of a service center or district director. *See La. Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, at *3 (E.D. La. 2000), *aff'd*, 248 F.3d 1139 (5th Cir. 2001).

III. CONCLUSION

The Petitioner has not submitted the required initial evidence of either a one-time achievement or documents that meet at least three of the ten criteria. As a result, we 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 material in the aggregate, concluding that while the Petitioner previously achieved some success as a hair stylist, the record does not support a finding that he 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 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 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) of the Act. 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 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.