U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28403260

Date: OCT. 12, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, a disc jockey (DJ) and sound producer, seeks classification as an individual of extraordinary ability in the arts. 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 the record did not establish the Petitioner qualifies as an individual of extraordinary ability either as the recipient of a one-time achievement that is a major, internationally recognized award, or at least three of the ten regulatory criteria listed at 8 C.F.R. § 204.5(h)(3)(i) – (x). 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) of the Act makes visas available to immigrants with extraordinary ability if:

(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate international recognition of his or her achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then he or she must provide sufficient qualifying documentation that meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. See Kazarian v. USCIS, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); see also Visinscaia v. Beers, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); Rijal v. USCIS, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

II. ANALYSIS

The Petitioner asserted that he is an individual of extraordinary ability as a DJ, sound producer, and digital marketer. The Director's decision stated:

> USCIS considers the field of digital marketing to be a different field from that of being a DJ or Sound Producer. . . A beneficiary must show how he will continue working in the United States in the claimed area of expertise. The record shows that the beneficiary intends to work for a record label [redacted] and will "record, mix, master and deliver to the company master recordings." Therefore, this petition will be adjudicated based on the beneficiary's extraordinary ability as it relates to this field (DJ/sound producing).

On appeal, the Petitioner provides no evidence or arguments addressing the Director's determination regarding the field of expertise.[1] Therefore, we will analyze the record based upon the Petitioner's asserted extraordinary ability as a DJ and sound producer, and not as a digital marketer. While we do not discuss each piece of evidence individually, we have reviewed and considered each one.

Because the Petitioner has not 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 found the Petitioner met one of the evidentiary criteria, that of 8 C.F.R.

[1] We therefore consider this issue abandoned. See Matter of R-A-M-. 25 I&N Dec. 657. 658 n.2 (BIA 2012) (stating that when a filing party fails to appeal an issue addressed in an adverse decision, that issue is waived). See also Sepulveda v. *U.S. Att'v Gen.,* 401 F.3d 1226. 1228 n. 2 (11th Cir. 2005). citing United States v. Cunningham, 161 F.3d 1343, 1344 (11th Cir. 1998); Hristov v. Roark, No. 09-CV-27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (plaintiff's claims were abandoned as he failed to raise them on appeal to the AAO).

§ 204.5(h)(3)(vii), related to artistic exhibitions and showcases. On appeal, the Petitioner asserts he meets six additional evidentiary criteria, which we will analyze below.[2]

> Documentation of the individual'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)

To fulfill this criterion, a petitioner must demonstrate that he received prizes or awards, and they are nationally or internationally recognized for excellence in the field of endeavor.[3]

The Director analyzed the Playlist [redacted] honor the Petitioner received. The Director stated, "we do not consider such an honor to be a nationally or internationally recognized prize or award for excellence in the field of endeavor, because it is limited to participants of that competition who are interested in their music being played in a park or skating rink in [redacted]." We agree with the Director's analysis of the Petitioner's eligibility under this criterion. The Playlist [redacted] honor is neither an award or prize, nor is it granted for excellence in the field of DJ'ing or sound producing. Rather, it is a determination that an artist's track will be played in a park in [redacted] The Director also concluded that the Playlist [redacted] honor is not uncommon in the field. Evidence indicates that there were "500 winning tracks" among 20 to 30 winning participants each year. The competition's large number of winners each year further suggests that selection is not based on excellence in the field. Although the Petitioner submitted evidence of past winners, he provided little evidence to establish that these past winners enjoy national or international acclaim such that it would suggest the honor is nationally or internationally recognized.

On appeal, the Petitioner provides additional background information on the competition and emphasizes that it is open to artists from many different countries. While we acknowledge the international nature of the competitors, the Petitioner has not provided sufficient evidence showing that winning the competition is a prize or award, that it is for excellence in DJ'ing or sound production, or that it is nationally or internationally recognized in the field. Accordingly, the Petitioner has not established eligibility under this criterion.

> Published material about the individual in professional or major trade publications or other major media, relating to the individual *'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 fulfill this criterion, a petitioner must demonstrate published material about him in professional or major trade publications or other major media, as well as the title, date, and author of the material.[4]

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[2] Initially, the Petitioner asserted eligibility under the criteria 8 C.F.R. § 204.5(h)(3)(ii), (vi), and (x), related to membership, authorship of scholarly articles, and commercial box office success, respectively. The Director determined the evidence was insufficient to establish eligibility under these criteria. On appeal, the Petitioner does not assert error in that determination and therefore we consider the issue of eligibility under these three criteria to be waived.

[3] See generally 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 6 (Dec. 22, 2010), https://www.uscis.gov/policymanual/HTML/PolicyManual.html.

[4] See generally USCIS Policy Memorandum PM 602-0005.1, supra, at 7.

We agree with the Director that the Petitioner has not established how Fashion and Beauty magazine is a professional or major trade publications or other major medium.[5] The Petitioner provided the magazine's 2013 circulation data, which does not appear to be relevant to the magazine's circulation status in 2015, when they featured the Petitioner in their online publication. Further, the Petitioner did not support the record with independent, objective evidence corroborating the medium's own circulation claims. USCIS need not rely on the self-promotional material of the publisher. See Braga v. Poulos, No. CV 06 5105 SJO (C.D.C.A. July 6, 2007) *aff'd* 2009 WL 604888 (9th Cir. 2009) (concluding that self-serving assertions on the cover of a magazine as to the magazine's status is not reliant evidence of a major medium); see also, e.g., Victorov v. Barr, No. CV 19-6948-GW-JPRX, 2020 WL 3213788, at *8 (C.D.C.A. Apr. 9, 2020).

On appeal, the Petitioner emphasizes that the published material need only be about the Petitioner's work in the field and that there is no need for his inclusion in the publication to have any significance attached to it. While we acknowledge this interpretation, the Director's determination did not turn upon whether the articles are about the Petitioner. The Petitioner's assertions on appeal do not overcome the determination that the material is not published in professional or major trade publications or other major media. Accordingly, the Petitioner does not meet this criterion.

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

This regulatory criterion requires the petitioner to show he has not only been invited to judge the work of others, but also that he actually participated in the judging of the work of others in the same or allied field of specialization.[6] The Director determined the Petitioner's evidence did not establish eligibility under this criterion because "the regulation cannot be read to include every informal instance of evaluating subordinate employees or products in participation in a job function." We agree. However, on appeal, the Petitioner provided additional analysis regarding the Petitioner's participation in a casting panel for [redacted]. While casting, the Petitioner evaluated participants to determine those best suited to perform at [redacted]. The additional explanation on appeal is sufficient to establish that the evidence satisfies the plain language of the criterion. Therefore, we conclude the Petitioner has met this criterion.[7]

> Evidence of the individual *'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)

In order to satisfy the regulation at 8 C.F.R. § 204.5(h)(3)(v), a petitioner must establish not only that has he made original contributions, but that they have been of major significance in the field. For example, a petitioner may show that the contributions have been widely implemented throughout the

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[5] See generally USCIS Policy Memorandum PM 602-0005.1, supra, at 7 (indicating that evidence of published material in professional or major trade publications or in other major media publications should establish that the circulation (on-line or in print) is high compared to other circulation statistics).

[6] See generally USCIS Policy Memorandum PM 602-0005.1, supra, at 8.

[7] However, were we to engage in a final merits determination, we would conclude the Petitioner's evidence under this criterion is not probative of extraordinary ability as a DJ or sound producer.

field, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance.[8]

The Director analyzed the [redacted] materials and the workshops the Petitioner conducted, as well as his academic thesis regarding how marketing can improve the efficiency of banking. We agree with the Director's conclusion that such evidence does not relate to the field of being a DJ or sound producer. Even if we ignore that digital marketing is a separate field from DJ'ing or sound production, the record would still not contain sufficient evidence to conclude that the Petitioner's digital marketing techniques are original or innovative as claimed. In other words, simply because a client is unfamiliar with or had not previously leveraged digital marketing options, does not establish that the methods the Petitioner offers are original. In fact, the evidence indicates that the Petitioner undertook digital marketing courses to learn more about the field, which further suggests that the methods the Petitioner uses are not necessarily original. Just as important, even if the Petitioner developed or created methods that various artists use in their work, this would not demonstrate the methods' significance in the field, as opposed to only the individual artists, clients, and businesses that hired the Petitioner for his services.[9] Therefore, even original music tracks are insufficient under this criterion unless the evidence also demonstrated that they were of major significance to the field.

We reviewed each recommendation letter but conclude that they lack specifics and use hyperbolic language that we do not consider to be probative of eligibility under this criterion.[10] USCIS need not accept primarily conclusory statements. *1756, Inc. v. The U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.C. Dist. 1990). To illustrate, many authors claim that the Petitioner's digital marketing and sound production techniques contributed to their success. In support, they provide statistics, such as the number of social media followers they have, track downloads, or traffic to their sites. However, there is little comparative evidence connecting the Petitioner's work to their social media presence or even a baseline for which to compare an artist's prior social media presence to their improved presence after working with Petitioner. Other authors reference that Zara and the National Football League (NFL) used the Petitioner's musical tracks, but they do not provide sufficient details about the Petitioner's role in producing the tracks, nor does the record contain sufficient evidence to substantiate the authors' assertions. Even if the Petitioner worked on a particular track that became mainstream, increased the artists' downloads, or led to artists' success, there is little evidence to establish how these accomplishments would be of major significance to the DJ or sound production field.

The evidence does not establish the Petitioner made original contributions, or that the contributions have been majorly significant in the field. Therefore, the Petitioner has not established eligibility under this criterion.

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[8] See Visinscaia, 4 F. Supp. 3d 126 at 134.

[9] See generally USCIS Policy Memorandum PM 602-0005.1, supra, at 8-9; see also Visinscaia, 4 F. Supp. 3d at 134-35 (upholding a finding that a ballroom dancer had not met this criterion because she did not corroborate her impact in the field as a whole).

[10] See id. at 9; see also Kazarian, 580 F.3d at 1036, *aff'd* in part 596 F.3d at 1115 (holding that letters that repeat the regulatory language but do not explain how an individual's contributions have already influenced the field are insufficient to establish original contributions of major significance in the field).

> 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)

A petitioner must establish that he has performed in a leading or critical role. For a "leading" role, we consider evidence establishing that a petitioner is (or was) a leader within the organization or establishment.[11] For a "critical" role, we look to evidence that establishes a petitioner has contributed in a way that is of significant importance to the outcome of the organization or establishment's activities.[12]

The Director acknowledged McDonald's as a recognized establishment but concluded that the Petitioner's Certificate of Gratitude for participating in [redacted] did not establish how the Petitioner performed a leading or critical role. The Director also determined the Petitioner's certificates of appreciation and support letters were insufficient, as they originated from organizations for which the evidence did not establish a distinguished reputation.

On appeal, the Petitioner emphasizes that the recommendation letters' authors demonstrate how the Petitioner served in a leading or critical role for them. Specifically, various musical artists and DJs praise the Petitioner's work and highlight how leading and critical it was to their success. As previously explained, many of the authors use hyperbolic language without substantiating their assertions with sufficient evidence. For example, [redacted] writes that "[a]ll [the Petitioner's] contributions let us accelerate our promotion and drive real fan engagement and growth. However, [redacted] does not sufficiently identify each contribution or provide corroborative evidence or detail substantiating the claimed accelerated promotion, fan engagement, and growth. Similarly, [redacted] states the Petitioner "helped us to sign contracts with the most talented people in the world, undiscovered "musical treasures," but he does not identify who the musical treasures are or how the Petitioner helped to discover them. A celebrity YouTube star writes that the Petitioner boosted her career and that she "discovered music industry secrets" as a result of collaborating with the Petitioner. However, the author does not provide sufficient comparative evidence to substantiate a "boost" in her career or how it is attributable to the Petitioner, nor does she identify what secrets she learned from the Petitioner or how a "collaborator" role is leading or critical.

These examples are illustrative of the recommendation letters as a whole and contribute to our determination that the Petitioner's leading or critical role for these artists is unsubstantiated. Just as important, the Petitioner has not explained how individual artists are "organizations or establishments," nor has the Petitioner provided sufficient evidence of their reputations. We acknowledge the artists' self-proclaimed reputations; however, as this is neither independent nor objective, it is of little probative value. Accordingly, the Petitioner has not established eligibility under this criterion.

> Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field. 8 C.F.R. § 204.5(h)(3)(ix).

[11] See generally USCIS Policy Memorandum PM 602-0005.1, supra, at 10.
[12] Id.

To meet this criterion, a petitioner must demonstrate that his salary or remuneration is high relative to the compensation paid to others working in the field.[13] The Director explained that average salary information "for those performing work in a related but distinct occupation with different responsibilities is not a proper basis for comparison" and that to "successfully claim this criterion, a petitioner must submit documentary evidence of the earnings of those in his occupation performing similar work at the top level of the field because this is where the petitioner claims to stand." The Petitioner provided average salary data for [redacted] from Russia's Office of Federal State Statistics Service (PETROSTAT). However, positions such as those entitled "advertising and marketing specialists," do not appear analogous to the Petitioner's position and duties. Further, PETROSTAT specifically states that it does not have information on the average accrued wages by types of economic activity in the Russian Federation and that its data do not provide a sufficient level of reliability. Accordingly, we conclude the Petitioner's evidence is not sufficiently detailed or reliable for average salary comparison purposes.

On appeal, the Petitioner asserts that demonstrating the Petitioner's salary is above average is sufficient to establish eligibility under this criterion. However, we need not analyze this assertion, as the Petitioner has not presented sufficient evidence of his earnings. Instead, he offered evidence of contracts he signed with businesses and copies of invoices. It is not apparent from these documents what the Petitioner's salary or remuneration is in total or across any particular span of time. For the foregoing reasons, the Petitioner has not established eligibility under this criterion.

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 the Petitioner cannot fulfill the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3), we need not provide the type of final merits analysis referenced in Kazarian, 596 F.3d at 1119-20. Nevertheless, we advise that we have reviewed the record in the aggregate. We conclude that it does not support a finding that the Petitioner has established the acclaim and recognition required for the classification sought. The letter from singer and social media influencer, [redacted] notes that the Petitioner is one of a few "on his way to success;" however, 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. 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). For the reasons discussed, the Petitioner has not demonstrated his eligibility as an individual of extraordinary ability.

ORDER: The appeal is dismissed.

[13] See generally USCIS Policy Memorandum PM-602-0005.1, supra, at 11.