U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 25983327

Date: SEP. 13, 2023

Motion on Administrative Appeals Office Decision

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

The Petitioner, a visual effects artist and animator, 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 that the Petitioner did not establish eligibility as an individual of extraordinary ability by meeting at least three of the ten criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Petitioner appealed the decision, the decision was withdrawn, and the matter was remanded for entry of a new decision. The Director reevaluated the record and denied the petition, concluding that the evidence did not establish that the Petitioner meets at least three of the ten criteria to establish eligibility for the requested classification. The Petitioner filed a second appeal, and we dismissed the appeal. The matter is now before us on motion to reconsider.

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). Upon review, we will dismiss the motion.

I. LAW

An individual is eligible for the extraordinary ability classification if they have extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and their achievements have been recognized in the field through extensive documentation; they seek to enter the United States to continue work in the area of extraordinary ability; and their entry into the United States will substantially benefit prospectively the United States. Section 203(b)(1)(A) of the Act.

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 may demonstrate international recognition of their achievements in the field through a one-time achievement (that is, a

major, internationally recognized award). Absent such an achievement, a petitioner must provide sufficient qualifying documentation demonstrating that they meet at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

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).

A motion to reconsider must establish that our prior decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). Our review on motion is limited to reviewing our latest decision. 8 C.F.R. § 103.5(a)(1)(ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.

II. ANALYSIS

On motion, the Petitioner contests the correctness of our prior decision. In support of the motion, the Petitioner asserts that we incorrectly applied the regulation at 8 C.F.R. § 204.5(h)(3)(viii), the criterion for EB-1 eligibility requiring evidence that the individual has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.

In our prior appeal decision, which we incorporate by reference, we noted that 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. For a critical role, we look at 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 (appendix), https://www.uscis.gov/policymanual. We noted that the Petitioner asserted that he had played critical and leading roles in a number of productions for client companies on high level media projects for major corporations; we further noted the letters in the record containing details about the Petitioner's digital modeling work on these projects, including a video for [redacted] We determined that the evidence did not establish that his contracted roles on these projects were leading or critical for any organization or establishment with a distinguished reputation. We stated that individual campaigns and projects are not divisions or departments of an organization or establishment. Further, we concluded that the Petitioner had not established that his roles, in particular, were critical to the organizations or to departments or divisions thereof. We additionally noted that the Petitioner submitted no evidence to address whether the advertising agencies have a distinguished reputation; instead, it improperly relied on the prominence of some of the agencies' clients.

On motion, the Petitioner states that we erred in excluding from consideration the Petitioner's work as part of a team, including [redacted] that created a social media campaign for [redacted]

was designated as a finalist for a Shorty Award in the Mobile Campaign category.[1] Further, the Petitioner also indicates that we did not properly consider the Petitioner's efforts working through his employer, a visual effects studio, on an ad campaign sponsored by the Olympic Committee. a creative agency, won a Silver Marketing Award for Craft in the Cinematography category from Communications' Marketing Awards, and and the Petitioner are among many individuals and businesses credited on the award's website[2] for their participation in developing the project. Specifically, the Petitioner asserts on motion that we ignored his request to consider whether his efforts on these projects that resulted in awards constituted a critical role. We disagree. Our previous decision clearly articulated that, based on the evidence in the record, his efforts on these projects did not constitute a critical role.

The Petitioner also asserts on motion that we improperly discounted the Petitioner's role at because he was not part of a division or department of an organization or establishment. The Petitioner states that the focus should be on whether he "played a critical role, and whether the contribution resulted in a significant outcome to the organization." He states that the term "organization" in the criterion is not strictly defined and may be interpreted, according to Merriam-Webster,[3] as an "administrative and functional structure (such as a business or a political party)." The Petitioner also states that the term "organization" may be interpreted, according to the Cambridge Dictionary,[4] as "a group of people who work together in an organized way for a shared purpose." On that basis he contends that his contributions to should be recognized as evidence of his critical roles for organizations.

Our previous decision did not "discount" the Petitioner's roles at Notably, we addressed the Petitioner's work on various projects and stated:

> … on any given project, the Petitioner was part of a creative team that involved varying numbers of other artists and technicians performing assigned roles. The Petitioner has not established that his roles, in particular, were critical to the organizations or to departments or divisions thereof. Participation in a successful project is not automatically or presumptively a critical role for the organization, or a department or division of the organization, that undertook the project.

A person's performance in a role determines whether the role is (or was) critical. We determined that the Petitioner did not meet his burden of proof with regard to whether any of his roles were critical. The evidence does not provide insight into how and in what manner the Petitioner's role as either a visual affects artist or animator was critical to a definable operational component or outcome of any specific organization. Thus, regardless of the definition of "organization" utilized, the Petitioner has not sufficiently established his critical role in one.

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[1] As explained in our prior decision, the Petitioner had previously acknowledged that the campaign did not become a finalist for a Shorty Award until after the petition's filing date. A petitioner must meet all eligibility requirements at the time of filing. 8 C.F.R. § 103.2(b)(1).

[2] *See* https://marketingawards.strategyonline.ca/winners/winner accessed July 31, 2023.

[3] *See* https://merriam-webster.com/dictionary/organization.

[4] *See* https://dictionary.cambridge.org/us/dictionary/english/organization.

Further, as noted above, our previous decision addressed the question of whether the agencies that the Petitioner worked for could be considered to have distinguished reputations; we determined that the Petitioner had not submitted evidence to address that possibility. The Petitioner must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376. The Petitioner's current contention is that [ ] have distinguished reputations based on their "award winning" campaigns. However, similar to the deficiency related to his asserted critical roles, the Petitioner failed to meet his burden of proof relating to distinguished reputation. A distinguished reputation cannot be implied by association but must instead be established with relevant, probative, and credible evidence. *Id.*

The Petitioner did not sufficiently establish that he performed in a leading or critical role for organizations or establishments that have a distinguished reputation. The Petitioner has not shown that our previous decision misinterpreted the criterion at 8 C.F.R. § 204.5(h)(3)(viii). As we concluded previously, the Petitioner does not meet the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3).

Finally, we advised in our prior decision that although not required by *Kazarian,* we reviewed the record in the aggregate and determined that it does not support a conclusion that the Petitioner has established the acclaim and recognition required for the classification sought. While the Petitioner has had some success providing image modeling for promotional use by prominent clients, we concluded that he had not shown that the recognition of his work rises to the required level of sustained national or international acclaim or demonstrates 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, we determined that the record does not otherwise demonstrate that the Petitioner is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2). On motion, the Petitioner has not established that this determination was based on an incorrect application of law or policy and that it was incorrect based on the evidence in the record of proceedings at the time of the decision.

III. CONCLUSION

In the present case, we fully reviewed the evidence of record and rendered our previous decision based on that evidence in accordance with applicable laws, regulations, and USCIS policy. On motion to reconsider, the Petitioner has not established that our previous decision was based on an incorrect application of law or policy at the time we issued our decision. Therefore, the motion will be dismissed. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reconsider is dismissed.