U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28839239

Date: DEC. 10, 2024

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (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, concluding that the record did not establish that the Petitioner had satisfied at least three of ten initial evidentiary criteria, as required. The Director also concluded that the Petitioner had not submitted clear evidence that he is coming to the United States to continue work in the area of expertise. The matter is now before us on appeal under 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 immigrant visas available to individuals with 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. These individuals must 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 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 their achievements in the field through a one-time achievement in the form of a major, internationally recognized award. Or the petitioner can submit evidence 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. If those standards

do not readily apply to the individual's occupation, then the regulation at 8 C.F.R. § 204.5(h)(4) allows the submission of comparable evidence.

Once a petitioner has met the initial evidence requirements, the next step is a final merits determination, in which we 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 earned a bachelor's degree at a prestigious musical academy in Russia. He claims "opera-level vocal abilities," and he performs "both as a soloist and as a member and leader of a music band he personally founded." The Petitioner claims to have "personally invented a musical sub-genre" by being "the first and only widely known performer of rock and pop music" to play the [redacted] typically associated with folk music. The Petitioner has been in the United States since March 2022, when he entered as a B-2 nonimmigrant visitor.

When the Petitioner filed the appeal, he indicated that he would submit a brief within 30 days. That time has elapsed and the record does not contain any further submission from the Petitioner. Therefore, we will consider the record to be complete as it now stands, with the Petitioner's comments on the appeal form constituting the entire appeal.

Before we turn to the specific eligibility criteria, we will address two general issues that the Director cited more than once in the decision, and which the Petitioner disputes on appeal. The first of these issues concerns the certification of translations.

The regulation at 8 C.F.R. § 103.2(b)(3) requires that a document containing a foreign language must include a full English language translation. The translator must certify that the translation is complete and accurate, and that the translator is competent to translate from the foreign language into English.

At several points in the denial decision, the Director stated that the Petitioner "did not submit properly certified translations of . . . documents" in the record. On appeal, the Petitioner asserts that "certified translations . . . have been provided for every single foreign language document."

The record shows a specific deficiency in the translation certifications, which the Petitioner did not correct when given the opportunity to do so. In the translation certifications in the record, the translators attested to their own competence, and certified that the translations are "true and accurate." But the translators did not certify that the translations are also "complete" as the regulation requires.

In a request for evidence (RFE), the Director advised the Petitioner that every foreign language "document must be accompanied by a full and **complete** English translation," emphasizing the word "complete" as shown. The translations submitted in response to the RFE were, as before, certified as "true and accurate" but not as "complete." The Petitioner did not address this deficiency in response

to the RFE or on appeal. We note that the record contains two translations of the same document (an award certificate from 2008) and the translations do not fully match one another. The Petitioner is responsible for resolving inconsistencies in the record with independent, objective evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Below, we will discuss some of the translated materials, but we agree with the Director that the deficient translation certifications have compromised their evidentiary value.

The second general issue that the Director raised in the denial notice concerns the quality of the submitted evidence. The Director stated that the Petitioner's "evidence includes digitized material, possibly scanned, and some altered with handwriting on the copies. This material is not reliable documentation, nor does it comply with the regulatory requirements at 8 C.F.R. § 103.2(b)(3)."

On appeal, the Petitioner asserts that "every petitioner submits copies or scans rather than original documents."

Photocopies are generally acceptable as supporting documentation, but the Director has discretion to request original documents. *See* 8 C.F.R. §§ 103.2(b)(4), (5); 204.5(g)(1). In the RFE, the Director specifically requested "the originals of [certain] photographs" that the Petitioner had submitted, because "[i]t appears that some of the photographs may have been digitally altered." The Petitioner's response did not include the requested original photographs, or acknowledge the Director's request for them.

The Petitioner's disregarding a request for original documentation is an adverse factor. *See* 8 C.F.R. § 103.2(b)(5). But more broadly, the Director's general assertion that unspecified documents were "altered with handwriting on the copies" is not specific enough. The Director did not say which documents were altered in this way, and did not say how the handwriting materially affected the contents of those documents. The Director also made a general reference to "self-manufactured evidence," without saying which documents appeared to have been created in that way.

The Director's general references to altered and self-created documents, therefore, lack the specificity required by 8 C.F.R. § 103.3(a)(1)(i), which requires the Director to "explain in writing the specific reasons for denial."

Nevertheless, the denial does not rest solely or primarily on the above concerns. The Director also made specific determinations regarding particular claims and supporting evidence, which constitute sufficient grounds for denial of the petition. As we will discuss below, the Petitioner has not adequately addressed those grounds on appeal.

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 Petitioner initially claimed to have satisfied five of these criteria, summarized below:

- (i), Lesser nationally or internationally recognized prizes or awards;
- (ii), Membership in associations that require outstanding achievements;
- (iv), Participation as a judge of the work of others;

- (v), Original contributions of major significance; and
- (vii), Display at artistic exhibitions or showcases.

The Director concluded that the Petitioner had not met any of the claimed criteria.

On appeal, the Petitioner addresses only one of the criteria. The regulation at 8 C.F.R. § 204.5(h)(3)(i) calls for documentation of the individual's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

The Petitioner submitted copies of guest passes to "prestigious event[s] at the [redacted] between 2012 and 2016, showing his name, the word "ARTISTIC" in Russian, and descriptions of each event. The Petitioner submitted no evidence to show that he received these passes as prizes or awards for excellence in his field, and no evidence to establish that the guest passes are nationally or internationally recognized.

In the denial notice, the Director stated: "a guest pass would not be considered a prize or award[, but] rather [as a] reservation to attend an event." On appeal, the Petitioner contends that "such invitations are only issued to [an] extraordinary few, equivalent to invitations to the White House in Washington, D.C. for a . . . chosen few people."

The Petitioner, however, has not submitted any documentary evidence to establish the circumstances under which he received the passes. Statements in a brief, motion, or Notice of Appeal are not evidence and thus are not entitled to any evidentiary weight. *Matter of S-M-*, 22 I&N Dec. 49, 51 (BIA 1998).

Although the passes appear to identify the Petitioner as an artist, the events described on the passes are outside of the Petitioner's claimed area of expertise as a musician. For example, one event is described as a "[g]ala evening dedicated to the day of employees of the internal affairs bodies of the Russian Federation"; another is a "[s]olemn event dedicated to the Day of Cosmonautics." The information on the passes themselves does not indicate that they relate to excellence in music, and they do not explain why the Petitioner received them. We agree with the Director that the Petitioner has not met his burden of proof to establish that these access passes are nationally or internationally recognized prizes or awards for excellence in his field.

The Petitioner submitted copies of translated certificates indicating that he won second prize at vocal competitions in Russia in 2008 and 2010. The Director concluded that the Petitioner had not established that the claimed awards meet the regulatory requirements. The Petitioner does not address this conclusion on appeal, and has therefore waived appeal on this issue. *See, e.g., 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)). *See also Debique v. Garland*, 58 F.4th 676, 684 (2d Cir. 2023), cert. denied, 144 S. Ct. 2715 (2024) (holding that issues not sufficiently argued on appeal are considered abandoned).

The Director also found that the Petitioner had not satisfied the requirements of the other four claimed criteria:

- Membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields. 8 C.F.R. § 204.5(h)(3)(ii).
- Participation 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).
- Original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field. 8 C.F.R. § 204.5(h)(3)(v).
- The display of the individual's work in the field at artistic exhibitions or showcases. 8 C.F.R. § 204.5(h)(3)(vii).

On appeal, the Petitioner does not specifically address or dispute the Director's conclusions regarding these four criteria, and therefore he has waived appeal on them.

The above conclusions are sufficient to determine the outcome of the appeal. Discussion of the remaining issue, regarding the Petitioner's intention to continue working in his field of expertise, cannot change the outcome of this appeal. Therefore, we reserve this issue.[1]

III. CONCLUSION

The Petitioner has not met his burden of proof to meet at least three of the ten initial evidentiary criteria at 8 C.F.R. § 204.5(h)(3). 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.

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. U.S. Citizenship and Immigration Services 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 a degree of recognition of his work that rises to a level of sustained national or international acclaim and 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, 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). The Petitioner has established that he is active in his field as a performer and songwriter, but has not submitted evidence to show that he has achieved sustained national or international acclaim.

The Petitioner has not demonstrated eligibility as an individual of extraordinary ability. We will therefore dismiss the appeal.

ORDER: The appeal is dismissed.

[1] *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 L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).