U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31112406

Date: JUL. 5, 2024

Appeal of Texas 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). He claims to be "an Artist Manager of extraordinary ability." 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 Texas Service Center denied the petition, concluding that the Petitioner did not meet the initial evidentiary requirements for this classification through presentation of evidence of either a one-time achievement or showing that he meets at least three of the alternative evidentiary criteria listed under 8 C.F.R. § 204.5(h)(3)(i)-(x). 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 that petitioner does not submit this evidence, then they must provide sufficient qualifying documentation that meets at least three of the ten categories of evidence listed at 8 C.F.R. § 204.5(h)(3)(i)-(x) (including items such as awards, published material in certain media, and authorship of scholarly articles).

Where a petitioner meets these initial evidentiary 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

A. Evidentiary Criteria

The Director concluded that the Petitioner did not establish he had received a major, internationally recognized award. On appeal, the Petitioner has not specifically challenged this finding, he has therefore waived this claim. *See, e.g., Matter of M-A-S-*, 24 I&N Dec. 762, 767 n.2 (BIA 2009). As such, to meet the initial evidentiary requirements, the Petitioner must present evidence that satisfies at least three of the regulatory criteria under 8 C.F.R. § 204.5(h)(3)(i)-(x). In the decision denying the petition, the Director determined that the Petitioner had satisfied one criterion by submitting "[p]ublished material about [him] in professional or major trade publications or other major media, relating to [his] work in the field for which classification is sought." 8 C.F.R. § 204.5(h)(3)(iii). On appeal, the Petitioner maintains that he also meets two additional evidentiary criteria, which we will discuss below.[1]

> *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).

The Petitioner offers evidence showing that he is the founder and chief executive officer (CEO) of [redacted],[2] a co-owner of [redacted], and the president of [redacted]. In a July 2023 letter, the Petitioner's counsel explained that after founding [redacted] the Petitioner

[1] In the denial, the Director concluded that the Petitioner did not submit sufficient evidence satisfying the awards and prizes criterion under 8 C.F.R. § 204.5(h)(3)(i), and the commercial successes in the performing arts criterion under 8 C.F.R. § 204.5(h)(3)(x). On appeal, the Petitioner has not specifically challenged these findings, he has therefore waived these claims. *See, e.g., Matter of M-A-S-*, 24 I&N Dec. 762, 767 n.2 (BIA 2009).

[2] On appeal, the Petitioner explains that [redacted] "specializes in solely representing songwriters/producers" and is "concerned only with the publishing rights of its clients and building song catalogues which can ultimately be sold as a whole to music publishers."

"expanded [redacted] to include co-ownership of two music publishing companies, the record label and music publisher [redacted] . . . and the music publisher [redacted] The Director determined that while the Petitioner had submitted materials showing that "his roles in these organizations [are] both leading and critical," he did not provide sufficient "objective, documentary evidence [that] demonstrates that either organization has a distinguished reputation."

On appeal, the Petitioner submits additional evidence showing that [redacted] qualifies as an organization or establishment that has a distinguished reputation. Specifically, he offers documentation confirming that [redacted] has received industry certifications, including a RIAA platinum certificate that recognizes the sale of more than 1,000,000 copies of a single, a RIAA gold certificate that recognizes the sale of more than 500,000 copies of another single, and a BPI certificate that recognizes the sale of more than 600,000 copies of a third single. Online materials indicate that the Recording Industry Association of America (RIAA) is a trade organization in the United States and its "Gold & Platinum Awards [represent] a pinnacle of success in the music industry"; and that the British Phonographic Industry (BPI) is a trade organization in the United Kingdom that organizes the BRIT Award shows and its members account for 85% of all music sold in the United Kingdom.

In addition to its receipt of certificates, the record includes letters from individuals in the music industry discussing [redacted] distinguished reputation. For example, the chief operating officer (COO) of [redacted] states that [redacted] "is one of the most distinguished management companies in the music industry based on the BRIT Award and Grammy Award nominations and the commercial success [redacted] has helped [its] clients achieve."[3] The CEO of [redacted] provides that [redacted] has a distinguished reputation "based on the sheer amount of commercial and critical success it has achieved for its clients and the recognition it has received from the most powerful executives in the music industry." The CEO of [redacted] further notes that [redacted] represents clients who "have written and produced records that have generated billions of streams and thus millions of dollars in revenue." Other letters similarly confirm the distinguished reputation of [redacted] in the music industry.

Based on the certificates and recognition that [redacted] has received from trade organizations as well as letters that describe [redacted] accomplishments, the Petitioner has sufficiently demonstrated that [redacted] qualifies as an organization that has a distinguished reputation. As such, the Petitioner, as [redacted] founder and CEO, has shown to be an individual who has performed in a leading or critical role for an organization or establishment that has a distinguished reputation, satisfying the criterion under 8 C.F.R. § 204.5(h)(3)(viii).

> *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).

On appeal, the Petitioner maintains that he satisfies this criterion. The evidence, however, is insufficient to show that he has commanded a high salary or other significantly high remuneration for his services as an artist manager, in relation to others in the field.

[3] The Petitioner has presented published materials and letters from individuals in the music industry indicating that [redacted] clients include [redacted] and [redacted] musical artists, as well as [redacted] and [redacted] songwriters and producers who have produced hit singles.

In support of the petition, the Petitioner has offered a July 2023 letter from [redacted] treasurer/accountant, indicating that he will receive "Fee: $500,000 - $1.5 million" for the position of "artist manager." He has also provided a July 2023 letter from a certified public accountant, listing his "accumulated net income" and "accumulated gross income" between 2020 and 2022, and noting his ownership interests in [redacted] In addition, the Petitioner's 2021 and 2022 tax returns, the most recent tax filings in the record, indicate that his income in these years comprised of "wages, salaries, tips, etc." as well as earnings for owning partnerships and S corporations. Specifically, his tax returns show that in 2021, he earned $130,500 in "wages, salaries, tips, etc." while living in [redacted] California, and that in 2022, he earned $75,000 "wages, salaries, tips, etc." while living in [redacted], Florida.[4] His tax filings indicate that in 2021 and 2022, he received additional income based on his ownership interests in [redacted] The evidence thus shows that the Petitioner's 2021 and 2022 income included compensation for his work as an artist manager – in the form of "wages, salaries, tips, etc." – as well as compensation for owning businesses – in the form of income from partnerships and S corporations.[5]

The Petitioner has not shown that he can rely on his total income, which includes income for owning businesses, to establish that he has commanded a high salary or other significantly high remuneration for his work as an artist manager, in the field of artist management. On appeal, pointing to the July 2023 letter from [redacted] treasurer/accountant, the Petitioner argues that he "receives a salary in excess of $500,000 per year for his position as an artist manager." The record reveals that [redacted] is one of the businesses he owns. His 2021 and 2022 tax filings do not support the contention that his salary as an artist manager has been more than $500,000 per year. Rather, the tax filings list $130,500 as his "wages, salaries, tips, etc." in 2021 and $75,000 as his "wages, salaries, tips, etc." in 2022. The Petitioner has not established that his additional income derived from owning businesses can be considered as his salary or remuneration for his work as an artist manager.

As comparative evidence, the Petitioner submits an online printout from the U.S. Bureau of Labor Statistics, indicating that as of May 2022, the mean annual wage of an "agent[] and business manager[] of artists, performers, and athletes" was $120,000; an individual earning $161,340 would be at the 75th percentile of earning in the profession; and an individual earning $239,200 would be at the 90th percentile of earning in the profession. The printout further indicates that the annual mean wage for the profession was $142,040 in the [redacted] California area, and $108,490 in the [redacted] Florida, area. The Petitioner's 2021 and 2022 "wages, salaries, tips, etc." of $130,500 and $75,000, which are below the annual mean wage figures in the relevant locations, are insufficient to confirm that he has commanded a high salary or other significantly high remuneration for services as an artist manager, in relation to others in the field.

On appeal, the Petitioner offers copies of invoices that his businesses issued to clients to collect

[4] The record lacks Internal Revenue Service (IRS) Forms W-2 that list the Petitioner's employer(s) during 2021 and 2022.
[5] We are assuming in this decision that the Petitioner's "wages, salaries, tips, etc." pertain to his work as an artist manager. As the Director pointed out in the denial decision, however, the Petitioner has held other positions in his businesses, including the positions of president and CEO. The Petitioner has not submitted sufficient evidence differentiating between his income for working as an artist manager and his income for holding other executive positions.

commissions and other fees. These invoices might show the potential revenue of the businesses, but they do not specifically show the salary or remuneration of the Petitioner, based on his work as an artist manager. A corporation and an individual are two separate legal entities. *See Matter of Soffici*, 22 I&N Dec. 158, 162 (Comm'r 1998). This is true even if the individual is the sole shareholder of the business. *See id.* at 161-63. As such, potential revenue of a business, as reflected in its invoices, is not the same as the salary or remuneration the business owner might receive.

Based on the tax filings as well as other income-related documentation in the record, the Petitioner has not sufficiently shown that he has commanded a high salary or other significantly high remuneration for services as an artist manager, in relation to others in the field. As such, he has not satisfied the criterion under 8 C.F.R. § 204.5(h)(3)(ix).[6]

B. O-1 Nonimmigrant Status

We acknowledge that the Petitioner has received O-1 status, a classification reserved for nonimmigrants of extraordinary ability. Although U.S. Citizenship and Immigration Services (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 standard, statute, regulations, and case law. Many immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. *See, e.g.*, *Sunlift Int'l v. Mayorkas*, 20-cv-08869-JCS, 2021 WL 3111627 (N.D. Cal. Jul. 22, 2021); *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dep't of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41, 42 (2d Cir. 1990). Furthermore, our authority over the USCIS service centers, the offices adjudicating nonimmigrant visa petitions, 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 to follow that finding in the adjudication of another immigration petition. *See La. Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, at *2 (E.D. La. Mar. 15, 2000).

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 listed under 8 C.F.R. § 204.5(h)(3)(i)-(x). As a result, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F. 3d at 1119-20. Nevertheless, we note 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 to be classified as an individual of extraordinary ability in the field of artist management.

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. Here, the Petitioner

[6] On appeal, the Petitioner argues that he has met this criterion because the Director previously concluded that he had met this criterion in another petition filing. We are not bound to a finding that the Director made in another petition. *See La. Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, at *2 (E.D. La. Mar. 15, 2000). Rather, as we have done in this case, we must consider the evidence before us when deciding whether the Petitioner has satisfied a particular criterion.

has established that he contributed to the success of his businesses and to the success of the businesses' clients. But he has not shown that his accomplishments rise to the required level of 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 is one of the small percentage of individuals who have risen to the very top of the field of endeavor. *See* Section 203(b)(1)(A) of the Act; 8 C.F.R. § 204.5(h)(2).

For the reasons discussed above, the Petitioner has not demonstrated eligibility to be classified as an individual of extraordinary ability in the field of artist management. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.