U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF R-R-A-

DATE: FEB. 8, 2017

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a film director and screenwriter, 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, Nebraska Service Center, denied the Form I-140, Immigrant Petition for Alien Worker, concluding that the Petitioner had satisfied only two of the initial evidentiary criteria, of which he must meet at least three.

The matter is now before us on appeal. On appeal, the Petitioner submits additional evidence and a brief arguing that he meets at least three criteria.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

The Petitioner may demonstrate his extraordinary ability through sustained national or international acclaim and achievements that have been recognized in his field through extensive documentation. Specifically, section 203(b)(1)(A) of the Act states:

> Aliens with extraordinary ability. -- An alien is described in this subparagraph 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 his or her 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 he or she 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).

Satisfaction of at least three criteria, however, does not, in and of itself, establish eligibility for this classification. *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), *aff'd*, 683 F.3d. 1030 (9th Cir. 2012); *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (holding that the "truth is to be determined not by the quantity of evidence alone but by its quality" and that U.S. Citizenship and Immigration Services (USCIS) examines "each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true"). Accordingly, where a petitioner submits qualifying evidence under at least three criteria, we will determine whether the totality of 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.

II. ANALYSIS

The Petitioner currently works as a film director and screenwriter and he has expressed his intent to continue that work in the United States. As the Petitioner has not indicated or established 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). In denying the petition, the Director found that the Petitioner met the lesser awards criterion at 8 C.F.R. § 204.5(h)(3)(i) and the judging criterion at 8 C.F.R. § 204.5(h)(3)(iy). On appeal, the Petitioner maintains that he meets the published material criterion under 8 C.F.R. § 204.5(h)(3)(iii), the contributions of major significance criterion under 8 C.F.R. § 204.5(h)(3)(v), the high salary or remuneration criterion under 8 C.F.R. § 204.5(h)(3)(ix), and the commercial success criterion at 8 C.F.R. § 204.5(h)(3)(x).[1] The Petitioner further argues that

[1] Although he previously claimed eligibility for the membership criterion under 8 C.F.R. § 204.5(h)(3)(ii), and the leading or critical role criterion under 8 C.F.R. § 204.5(h)(3)(viii), the Petitioner does not contest the decision of the Director, offer further arguments, or submit additional evidence for these criteria on appeal, nor does the record support a finding that he meets them. Accordingly, we will not address these criteria in this decision, nor will we address criteria under which the Petitioner has not claimed eligibility.

he has demonstrated his sustained national or international acclaim and that he is among the small percentage at the very top of the field of endeavor. We have reviewed all of the evidence in the record of proceedings, and it does not support a finding that the Petitioner meets the plain language requirements of at least three criteria.

A. Evidentiary Criteria

Documentation of the alien'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).

The Director concluded that the Petitioner satisfied this criterion. We find the record does not support the Director's favorable determination related to this criterion for the reasons outlined below.

The Petitioner attested to having received "nationally or internationally recognized prizes or awards for excellence in the field of endeavor," and he provided a list of the pertinent awards accompanied by additional information for each one. The Petitioner listed the following awards: the 2009 from the the 2005 from the 2009, the 2008 from and the 2009.

The Petitioner has not shown that the submitted awards are nationally or internationally recognized. Regarding the 2009, the Petitioner offered a copy of the award, a letter from a member of the and an article about one of the Petitioner's films receiving this award. indicated that the of the government chose the Petitioner's film to receive this award. However, did not specify the manner in which this award has received national or international recognition. An award does not necessarily receive national or international recognition solely because a national government entity issued the accolade. While the Petitioner submitted an article referring to the award with a handwritten date, it is missing the publication's name and the record does not include objective circulation figures showing that this coverage is indicative of national or international recognition.

Next, the Petitioner offered a letter from chairman of the Within this letter, Chairman named the Petitioner as the award recipient in 2009 and discussed his prominence in the film industry in However, the chairman did not describe the national or international recognition of the submitted award, nor did the Petitioner offer other evidence of its renown.

The 2008 is documented by a letter certifying the Petitioner received this achievement in the category of best screenplay, dialogue for the film titled However, neither this letter nor the record establish that this is an award that is recognized at least at the national level.

Regarding the 2009, the Petitioner described this as an annually issued, nationally recognized award. The evidence consists of a certificate of nomination and the award certificate. In this instance, the Petitioner has not provided sufficient supporting evidence to establish that this award is recognized beyond the presenting organization.

The final award submitted was the 2005. A letter from information officer for the indicated that this award derived from the ' 2005." However, the fact that an award originated from a nationwide competition is not sufficient to establish that the award itself garnered national or international recognition within the Petitioner's field.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) specifically requires that the Petitioner's prizes or awards be nationally or internationally recognized in the field of endeavor. This recognition may be demonstrated, for example, through national or international level media coverage. Unsupported conclusory statements are not sufficient to demonstrate that a particular prize or award is nationally or internationally recognized. Here, while the Petitioner repeated the language of the statute or regulations in describing the prestige for his awards, he did not offer sufficient corroborating evidence of recognition at the national or the international level. *See Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.).

Regardless of the assertions within letters or within the Petitioner's statement, the record lacks probative evidence demonstrating that the preceding awards were recognized beyond the presenting organizations, and that they are commensurate with nationally or internationally recognized prizes or awards for excellence in the field. Accordingly, the Petitioner has not established that he meets this criterion and we hereby withdraw the Director's favorable finding on this issue.

> *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).

The Petitioner provided articles from several publications, letters from some of these same publications claiming each as a form of major media, and a list he generated indicating the author of each article. The Director determined that the Petitioner did not meet the requirements of this criterion. On appeal, the Petitioner claims that the previous record established his eligibility.

The Petitioner offered articles that are about him and are related to his work in the field from four publications: and However, the translations of the foreign language articles did not contain the author of the material and several were missing the date. The regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires both of these elements. The Petitioner attempted to remedy this shortcoming by stating the

author and date of each article in a separate statement. Statements made without supporting documentation are of limited probative value and are insufficient to satisfy a petitioner's burden of proof. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

Furthermore, in two instances, the Petitioner claimed that a person other than the one listed on the article authored the material. For example, within the article titled '[redacted] from [redacted] the Petitioner indicated this article's author was [redacted] while the photocopy of the article presents the author's name, written in English, as [redacted] The Petitioner presents an August 15, 2016, letter from [redacted] chairperson of the [redacted] Within this letter, [redacted] indicates that the standard practice in Nepal is for the editor-in-chief or the deputy editor to decide if the author of a journalistic piece will appear in the byline. While this may explain why some of the articles did not list an author, it does not remedy those in which the Petitioner offered a name that conflicts with the name in the article.

In addition, the Petitioner has not offered sufficient evidence that the articles appeared in major media. To qualify as major media, the publication should have significant national or international distribution. The Petitioner submitted a May 10, 2016, letter from [redacted] chief administrative officer of the [redacted] Within [redacted] letter, he named several of the publications related to the Petitioner's evidence and ascribed a "National A" or a "National A+" grade rating. The Petitioner did not offer probative documentation to establish the exact nature of a grade A or a grade A+ rating. The record lacks evidence that these ratings reflect the national or international circulation or distribution of any of the publications, as opposed to referring to the quality of the material. Accordingly, we cannot determine that such ratings establish the material on record constitutes qualifying examples of major media. On appeal, the Petitioner identifies a website printout regarding each publication's classification. The website relates to the [redacted] and discusses the committee makeup and some limited information pertaining to how Nepal classifies publications. Missing from this evidence is information to establish the meaning of Nepal's classification system noted within [redacted] May 2016 letter. As a result, the Petitioner has not demonstrated that the ratings assigned to the publications indicate that they are major media circulated at the national or international level.

As further evidence pertaining to the issue of major media, the Petitioner submitted letters that either derive from an individual who represents the publication in question, or from a former employee of the publication. Each letter's author attests to the prestige or the national reach of the publication. These letters pertain to the following publications: [redacted] and [redacted] As the material is in the form of a letter from the publication itself rather than published circulation statistics from an official or independent source or other publicly available source, it is of limited probative value. We are not required to rely on the self-promotional material of the publisher. *See Braga v. Poulos*, No. CV 06-5105 SJO FMOX, 2007 WL 9229758, at *7 (C.D. Cal. July 6, 2007) *aff'd*, 317 F. App'x 680 (9th

Cir. 2009). The Petitioner has not submitted evidence to corroborate the claims within the letters. *See Soffici*, 22 I&N Dec. at 165.

For the reasons discussed above, the Petitioner has not submitted evidence that meets the plain language requirements of 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).

The Petitioner documented his service judging the work of others, including his position on the jury of the for the "best of" category in 2014. Thus, the Director concluded that the Petitioner satisfied this criterion, and the record supports that finding.

> *Evidence of the alien'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).

The plain language of this regulatory criterion requires that the contributions rise to the level of major significance in the field as a whole, rather than to a project or an organization. *See Visinscaia v. Beers*, 4 F. Supp. 3d at 135-136. The phrase "major significance" is not superfluous and, thus, it has some meaning. *Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F. 3d 28, 31 (3rd Cir. 1995) *quoted in APWU v. Potter*, 343 F.3d 619, 626 (2nd Cir. Sep 15, 2003).

As evidence under this criterion, the Petitioner provided an article relating to his appearance with a former to Nepal, and multiple letters from his film industry associates. The Director noted the lack of evidence from those in the field outside the Petitioner's home country and determined that he did not meet the requirements of this criterion. On appeal, the Petitioner claims his work as a screenwriter and director has widely influenced the field of film in Nepal, and he points to the previously discussed 2005 from the as evidence. The Petitioner also states that he was the sole Nepalese screenwriter and director of a documentary titled that included diplomatic officers. The Petitioner further emphasized his other documentary work and submits a new letter on appeal from vice president of the

The Petitioner has not shown that his work on documentaries has been impactful in his field. The article that included a former to Nepal was about a recurring exercise event and discussed the Petitioner's documentary titled Although this article described the Petitioner as a well-known movie writer and director, it did not illustrate the manner in which he has impacted or influenced his field through his work. The Petitioner further identifies a letter from the in which it recognized his work and awarded him the of 2005. While this letter recognizes one of the Petitioner's achievements, it does not include information about how such work has impacted the field. Additionally, the regulations contain a separate criterion regarding prizes or awards at 8 C.F.R. § 204.5(h)(3)(i). We will

not presume that items relating to the awards criterion are evidence that the Petitioner meets this criterion. To hold otherwise would render the regulatory requirement that a Petitioner meet at least three separate criteria meaningless. Further, the fact that the Petitioner was the sole Nepalese screenwriter and director working on this film does not demonstrate his influence in the field.

Although the Petitioner provided letters extoling his talent and experience in his field, such praise is not necessarily indicative of original artistic contributions of major significance in his field.[2] For example, the Petitioner provided a letter from from a doctoral candidate at the attested to the Petitioner's contribution to Nepali films and documentaries promoting social justice and human rights. indicated that she met the Petitioner while performing her doctoral research and that she appointed him to make a documentary regarding the trafficking of women and their reintegration to society. Although she stated the work was well received, she did not provide the name of the piece or describe the impact this work had in the Petitioner's field. Although asserted that the Petitioner is destined for significant accomplishment in the film industry, this criterion requires that he has already had a significant impact as of the date he filed the petition.

Within letter offered on appeal, he asserts the Petitioner is one of the most famous writers and directors in Nepal, and that he is the first lifetime member of the describes some of the Petitioner's business ventures, but falls short of explaining how he has influenced the field. The Petitioner's influence in the field is not readily apparent from attestation regarding his fame and membership in an organization. USCIS is not required to accept primarily conclusory assertions that are not corroborated by other evidence in the record. *1756, Inc. v. Att'y Gen*, 745 F. Supp. 9, 17 (D.D.C. 1990).

The remaining letters in the record describe work the Petitioner performed with or for the authors. It is not enough to be skillful and knowledgeable and to have others attest to those talents. The Petitioner must have demonstrably impacted his field. *See* 8 C.F.R. § 204.5(h)(3)(v); *see also Visinscaia*, 4 F. Supp. 3d at 134. The reference letters briefly discuss his film-related skills and activities, but they do not provide specific examples of how the Petitioner's work has significantly impacted the field at large or otherwise constitutes original contributions of major significance.

Solicited letters from colleagues that do not specifically identify contributions or specific examples of how those contributions influenced the field are insufficient.[3] *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009), *aff'd in part*, 596 F.3d 1115 (9th Cir. 2010). The opinions of experts in the field are not without weight and have been considered above. USCIS may, in its discretion, use letters as advisory opinions submitted as expert testimony. *See Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, USCIS is ultimately responsible for making the final

[2] While we discuss only a sampling of these letters, we have reviewed and considered each one.

[3] In 2010, the *Kazarian* court reiterated that our conclusion that "letters from physics professors attesting to [a petitioner's] contributions in the field" were insufficient was "consistent with the relevant regulatory language." 596 F.3d at 1122.

determination regarding a foreign national's eligibility. *Id.* The submission of letters from experts supporting the petition is not presumptive confirmation of eligibility; USCIS may, as this decision has done above, evaluate the content of those letters as to whether they support the foreign national's eligibility. *See id.* at 795; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact").

As discussed above, the Petitioner has not submitted sufficient evidence to satisfy the requirements of 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).

The plain language of this criterion requires a comparison against "others in the field." Average salary information for those performing work in a related but distinct occupation with different responsibilities is not a proper basis for comparison. The Petitioner must submit documentation of the earnings of those in his occupation performing similar work.[4] The Petitioner must present evidence of objective earnings data showing that he has earned a "high salary" or "significantly high remuneration" in comparison with those performing similar work during the same time period. *See Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994) (considering professional golfer's earnings versus other PGA Tour golfers); *see also Grimson v. INS*, 934 F. Supp. 965, 968 (N.D. Ill. 1996) (considering NHL enforcer's salary versus other NHL enforcers); *Muni v. INS*, 891 F. Supp. 440, 444-45 (N.D. Ill. 1995) (comparing salary of NHL defensive player to salary of other NHL defensemen).

In support of this criterion, the Petitioner provided letters from those working in the film industry in Nepal. The Director determined that the Petitioner did not meet the requirements of this criterion as the submitted material lacked specificity and did not offer probative evidence with which to compare his remuneration. On appeal, the Petitioner relies on this same documentation, as well as the new letter from

The letters supporting the Petitioner's eligibility under this criterion include the following assertions:

- indicates he paid the Petitioner 80,000 [of an unspecified currency] while he would normally pay other writers 40,000 to 50,000.
- states that he gave the Petitioner a 50 percent partnership in a movie and implies that no such offer would have been extended to other film directors.

[4] While we acknowledge that a district court's decision is not binding precedent, we note that in *Racine v. INS*, 1995 WL 153319 at *4 (N.D. Ill. Feb. 16, 1995), the court stated, "[T]he plain reading of the statute suggests that the appropriate field of comparison is not a comparison of Racine's ability with that of all the hockey players at all levels of play; but rather, Racine's ability as a professional hockey player within the NHL. This interpretation is consistent with . . . the definition of the term 8 C.F.R. § 204.5(h)(2), and the discussion set forth in the preamble at 56 Fed. Reg. 60898-99."

- [redacted] asserts that [redacted] shared a 50 percent partnership with the Petitioner for his script writing and directing work and that this represents the first instance in the Nepali film industry that any producer has offered the amount of 5,000,000 [in an unspecified currency].

The Petitioner has not provided supporting evidence that might corroborate the claims within the letters on record. As stated above, statements made without supporting documentation are of limited probative value and are not sufficient to meet the burden of proof in these proceedings. *See Soffici*, 22 I&N Dec. at 165. The Petitioner did not submit pay stubs or tax records documenting his actual salary or other remuneration. Further, the Petitioner did not offer evidence of the salaries for other screenwriters and film directors in Nepal. As such, the Petitioner has not submitted the material necessary under 8 C.F.R. § 204.5(h)(3)(ix).

> *Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.* 8 C.F.R. § 204.5(h)(3)(x).

As evidence under this criterion, the Petitioner provided an English translation of an article pertaining to a film that he directed. The Petitioner indicated that Nepal does not use a system of records of box office sales. The Director determined that the Petitioner did not meet the requirements of this criterion as he had not offered the types of required evidence. The regulation does not allow any alternative measure of one's commercial successes other than through "box office receipts or record, cassette, compact disk, or video sales." We agree with the Director that the submitted evidence does not meet the plain language of this criterion.

III. CONCLUSION

As discussed above, the record only satisfies one regulatory criterion. Had the Petitioner submitted the requisite evidence under at least three evidentiary categories, the next step would be a final merits determination that considers all of the evidence in the context of whether or not he has demonstrated: (1) a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor," and (2) that the foreign national "has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." 8 C.F.R. § 204.5(h)(2) and (3); *see also Kazarian*, 596 F.3d at 1119-20. Although we do not need to provide the type of final merits determination referenced in *Kazarian*, a review of the record in the aggregate supports a finding that the Petitioner has not established the level of expertise required for the classification sought.

ORDER: The appeal is dismissed.

Cite as *Matter of R-R-A-*, ID# 135136 (AAO Feb. 8, 2017)