U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF R-G-

DATE: JAN. 3, 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner seeks classification as an individual of extraordinary ability in the field of Uzbek traditional embroidery.[1] *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 initially approved the petition. Subsequently, the Director issued a notice of intent to revoke (NOIR) the approval, advising the Petitioner that he did not satisfy the initial evidence requirement of presenting evidence of a one-time achievement that is a major, internationally recognized award, or documentation that met at least three of the ten criteria listed under 8 C.F.R. § 204.5(h)(3)(i)-(x). After reviewing the Petitioner's NOIR response, the Director revoked the approval of the petition, finding that it had been approved in error.

On appeal, the Petitioner maintains that the Director erred, claiming that he meets five of the ten regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x) and is eligible for the classification. He supports his appeal with additional documentation.

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

I. LAW

Section 203(b)(1)(A) of the Act makes visas available to certain immigrants if:

(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international

[1] In addition to the instant petition, the Petitioner has filed a second petition seeking classification as an individual of extraordinary ability in the field of Uzbek traditional embroidery. That second petition remains pending at the time of this decision.

> acclaim and whose achievements have been recognized in the field through extensive documentation,
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> (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
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> (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 regulation at 8 C.F.R. § 204.5(h)(3) sets forth two options for satisfying this classification's initial evidence requirement. First, a petitioner can demonstrate 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 documentation that meets at least three of the ten criteria listed under 8 C.F.R. § 204.5(h)(3)(i)-(x) (including items such as qualifying awards, published material in certain media, and scholarly articles).

Where a petitioner meets the initial evidence requirement, we then consider the totality of the submitted material in a final merits determination and assess whether the record, as a whole, 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, 1119-20 (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, 1343 (W.D. Wash. 2011). This two-step analysis is consistent with our holding that the "truth is to be determined not by the quantity of evidence alone but by its quality," as well as the principle that we examine "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." *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

With respect to revocations, section 205 of the Act, 8 U.S.C. § 1155, states, in pertinent part, that the Secretary of Homeland Security "may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him [or her] . . . ."

In addition, the Board of Immigration Appeals has stated:

> In *Matter of Estime*, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if unexplained and unrebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the

> time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

Matter of Ho, 19 I&N Dec. 582, 590 (BIA 1988) (*citing Matter of Estime*, 19 I&N Dec. 450 (BIA 1987)).

By itself, the Director's realization that a petition was incorrectly approved is good and sufficient cause for the revocation of the approval of an immigrant petition. *Ho*, 19 I&N Dec. at 590. The approval of a visa petition vests no rights in the beneficiary of the petition, as approval of a visa petition is but a preliminary step in the visa application process. *Id.* at 589. A beneficiary is not, by mere approval of the petition, entitled to an immigrant visa. *Id.*

II. ANALYSIS

Upon a review of all the documents in the record, we conclude that the Director properly revoked the approval of the petition, because the record does not establish that the Petitioner satisfies his initial evidence requirement. Specifically, he has not presented evidence of his one-time achievement that is a major, internationally recognized award, or documentation that satisfies at least three of the ten criteria listed under 8 C.F.R. § 204.5(h)(3)(i)-(x).[2]

> *Documentation of the alien's 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).

The Petitioner claims that he meets this criterion because he is a member of the [redacted] He has submitted a certificate issued by the Chairman of the [redacted] of the organization, indicating that he is "on state registration of masters and handicraftsmen." The record includes a letter from [redacted] the head of the association, stating that it "is open only to highly skilled masters who are among the few on top of their fields and requires outstanding achievements of its members, as judged by nationally or internationally recognized experts in the respective field of folk art." The letter provides that the Petitioner's membership was recommended by [redacted] and [redacted]

The evidence in the record is insufficient to confirm that the Petitioner satisfies this criterion. While the letter from [redacted] contains language that mirrors the regulation, neither [redacted] nor the Petitioner has pointed to sufficient evidence in the record that supports the claim that the organization requires outstanding achievements of its members, as judged by recognized national or international experts. Specifically, the record lacks the entity's constitution, bylaws, or other official documents, detailing its membership selection process and criteria. Without additional evidence that accurately and credibly explains the association's membership requirements or selection process,

[2] The Petitioner has not alleged, and the record does not establish, that he has received a one-time achievement. *See* 8 C.F.R. § 204.5(h)(3). We will discuss the evidence concerning the five criteria that he claims to meet.

conclusory statements are insufficient to demonstrate that the Petitioner meets this criterion. *See 1756, Inc. v. United States Att'y Gen.*, 745 F. Supp. 9, 17 (D.D.C. 1990) (noting that we need not accept primarily conclusory statements).

Moreover, although the record includes letters from and the individuals who purportedly recommended the Petitioner for membership in the the documentation is insufficient to show that they qualify as national or international experts in their fields. Other than the opening sentence, which provides the author's field of expertise, these two letters are identical, including the same wording when discussing the Petitioner's qualifications and achievements in the field of Uzbek traditional embroidery. Based on the identical contents of these letters, the Petitioner has not shown that they reflect the authors' independent observations or that they confirm the authors' status as nationally or internationally recognized experts. While and resumes are in the record, the uncorroborated documents are insufficient to confirm the individuals are qualifying experts in their fields. Similarly, although claims that they are nationally recognized experts, he has not explained the basis of his knowledge or offered sufficient evidence in support of his statement.

Furthermore, the record includes inconsistent information relating to who had recommended the Petitioner for membership in the While provides that and recommended the Petitioner, a branch director of in Uzbekistan, indicates that it was who had recommended him. The record contains inconsistent documentation relating to this criterion, which must be resolved with independent, objective evidence pointing to where the truth lies. *Ho*, 19 I&N Dec. at 591-92. The Petitioner has not done so here. Based on the above reasons, he has not satisfied 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 Director concluded that the Petitioner met this criterion. The record supports this finding. Specifically, according to a certificate from the of the of the Republic of Uzbekistan, the Petitioner was "a member of the jury and judged the work of other craftsmen to determine the winners" at the 2015 exhibition held in Uzbekistan. The Petitioner has also submitted documentation confirming his participation as a judge in other events, including the 2014 showcase. Accordingly, he has satisfied this criterion.

> *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).

On appeal, the Petitioner asserts that he "has made a contribution of major significance to [the] field by virtue of his mastery of Uzbek traditional embroidery techniques and by adapt[ing] ancient

embroidery techniques to contemporary materials and tastes." The record includes reference letters in support of this criterion. For example, [redacted] letter states that the Petitioner's embroidery "is only slightly twisted, creating the impression of non-woven thread" and he "use[s] his innovative technique . . . to achieve an unusual and attractive visual effect of creating an interplay of light and shine in his decorations that is both inspiring and uplifting." [redacted] letter provides that the Petitioner has "made a contribution of major significance by virtue of his mastery of traditional embroidering techniques and their adaptation to contemporary materials and tastes." He further claims that the Petitioner's contributions "to the art of embroidery, decorative art, and cultural traditions of Uzbekistan are of major importance as the[y] have and will continue to influence the work of other artists" and that "[m]any of his unique creations have been displayed and sold at major exhibitions in Uzbekistan and Central Asia."

To satisfy this criterion, the Petitioner must establish that not only has he made original contributions but that they have been of major significance in the field of Uzbek traditional embroidery. Major significance in the field may be shown through evidence that his original methods or processes have been widely implemented throughout the field, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance in the field.

The record is insufficient to establish that the Petitioner has satisfied this criterion. While the reference letters discuss his work, noting in general that it is well-regarded and appreciated, they do not explain how specifically his work has impacted the field in a major or significant way, consistent with a finding of "contributions of major significance." For example, the record does not demonstrate that the Petitioner's techniques have been widely used by others in the field. The documents in the record, including those not specifically mentioned, primarily contain attestations of the Petitioner's status in the field without providing specific examples of how his contributions rise to a level consistent with major significance. Letters that repeat the regulatory language but do not explain how an individual's contributions have already influenced the field significantly are insufficient to satisfy this criterion. *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009), *aff'd in part*, 596 F.3d 1115. Moreover, we need not accept primarily conclusory statements. *1756, Inc.*, 745 F. Supp. at 17. Accordingly, the Petitioner has not satisfied this criterion.

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media. 8 C.F.R. § 204.5(h)(3)(vi).

On appeal, the Petitioner states that he has "published scholarly articles dedicated to the Uzbek traditional embroidery, its history and importance in Uzbek culture, in major media" and that he has "authored a treatise titled [redacted] which is devoted to the history and technology of embroidery in Uzbekistan." The record includes [redacted] a book that lists the Petitioner as an editor. According to [redacted], the head of [redacted] the publisher of the material, the Petitioner is also the author of the book and that the "[e]dition circulation is 1,000 copies." [redacted] further states that the book "is devoted to the art of embroidery, its history and varieties" and that it "was distributed to regional libraries." The record includes evidence that the Petitioner has authored articles that are published in *The Advice of Bukhara's Imam* and *Evening Bukhara.*

While the Petitioner might have authored written work, he has not shown that his pieces qualify as "scholarly articles," as required under the criterion. In general, scholarly articles report on original research, experimentation, or philosophical discourse, and often have footnotes, endnotes, or a bibliography, and may include graphs, charts, videos, or pictures as illustrations of the concepts express in the article.[3] Usually, scholarly articles are written for learned persons in that field. In this case, the Petitioner has not demonstrated that (which contains six pages) and the articles (which are each one page in length), without footnotes, endnotes, or bibliographies, qualify as scholarly.

Moreover, the Petitioner has not established that his work has been published in qualifying publications. For example, he has offered a letter from the chief editor of *Evening Bukhara*, stating that the newspaper is "intended for wide general readership" and that "[t]he circulation of publication is 580 copies"; as well as a letter from the chief editor of *The Advice of Bukhara's Imam*, indicating that the publication "has the circulation of 4,000 copies." The Petitioner has not demonstrated that based on the circulation data, these two publications qualify as major media. In addition, he has not presented adequate documentation confirming they constitute either professional or major trade publications. Based on the above reasons, the Petitioner has not met this criterion.[4]

> *Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.* 8 C.F.R. § 204.5(h)(3)(vii).

The Director concluded that the Petitioner met this criterion. The record supports this determination. Specifically, the Petitioner has offered a diploma from the Chairman of the of , Russia, stating that in 2009, the Petitioner exhibited his "high quality products made of silk and of his handmade original design jewelry" at the exhibition ; as well as documents from the confirming that in 2016, he displayed his silk embroidery at the festival. Accordingly, the Petitioner has satisfied 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 a result, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. Nevertheless, upon a

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[3] *See* 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* 9 (Dec. 22, 2010), https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/i-140-evidence-pm-6002-005-1.pdf.

[4] The record includes documentation of the Petitioner's authorship of materials after the filing of this petition in August 2016. This evidence, however, does not demonstrate his eligibility because he must establish that all eligibility requirements for the classification have been satisfied from the time of the filing and continuing through adjudication. *See* 8 C.F.R. § 103.2(b)(1).

review of the record in its entirety, we conclude that it does not support a finding that the Petitioner has established the acclaim and recognition required for the classification.

The Petitioner seeks a highly restrictive visa classification, intended for individuals who are 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). Here, the Petitioner has not shown that the significance of his accomplishments is indicative of the required 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 has garnered national or international acclaim in the field, and he 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; 8 C.F.R. § 204.5(h)(2).

For the foregoing reasons, the Petitioner has not shown that he qualifies for classification as an individual of extraordinary ability.

ORDER: The appeal is dismissed.

Cite as *Matter of R-G-*, ID# 1856892 (AAO Jan. 3, 2019)