U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF P-B-M-

DATE: JAN. 25, 2018

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a figure skater, 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 Texas Service Center denied the Form I-140, Immigrant Petition for Alien Worker, concluding that the Petitioner had not satisfied any of the initial evidentiary criteria, of which he must meet at least three.

On appeal, the Petitioner provides a brief and documentation, stating that he meets at least three criteria.

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

I. LAW

Section 203(b)(1)(A) of the Act makes visas available to qualified 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 two options for satisfying this classification's initial evidence requirements. First, a petitioner can demonstrate a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then he or she must provide 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).

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). 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).

II. ANALYSIS

The Petitioner is an ice show figure skater who has performed in various productions, including [redacted] shows. Because the Petitioner has not indicated or established that he has received a major, internationally recognized award, he must satisfy at least three of the ten criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x).

On appeal, the Petitioner maintains that he meets four criteria: published material under 8 C.F.R. § 204.5(h)(3)(iii), artistic display under 8 C.F.R. § 204.5(h)(3)(vii), leading or critical roles under 8 C.F.R. § 204.5(h)(3)(viii), and high salary under 8 C.F.R. § 204.5(h)(3)(ix). We have reviewed all of the evidence in the record, and conclude it does not support a finding that the Petitioner satisfies the plain language requirements of at least three criteria.

> *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 contends that, because the criterion uses the phrase "relating to the alien's work," it requires the published materials to have a logical connection to his work in the field, but does not require that his work be the primary emphasis of the article. He also claims that, within the

published material in the record, he is often the "only performer interviewed and quoted regarding the production," and that it is significant to be "repeatedly singled out to represent the production and thus the company from among the other hundreds of performers." The plain language of 8 C.F.R. § 204.5(h)(3)(iii) requires published material "about" the individual relating to his or her work. *See, e.g., Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at *1, *7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles regarding a show are not about the actor).

On appeal, the Petitioner submits an article entitled ' published online at in 2005. The article discusses how and as well as other characters, will be meeting fans during a production. The article quotes the Petitioner as stating that "this was the first time all seven were brought together in one live production." While the article thus mentions the Petitioner as one of the skaters in the show, the article is not about him but rather about the production.

Further, the record contains screenshots from and that name the Petitioner as one of the performers and at times include a quote from him relating to the productions, but they do not reflect published material "about" him consistent with the plain language of the criterion. For example, regarding the record includes a screenshot relating to an upcoming production at in Texas. Although the Petitioner is credited with being one of the ice skaters, the screenshot is about a promotional event to win tickets and to attend the show. Moreover, with the exception of the Petitioner did not provide sufficient evidence demonstrating that the websites are major media.

In addition, the record includes screenshots from and that do reflect published material about the Petitioner relating to his work. For instance, the screenshot posted on consists of an interview with the Petitioner regarding his experience working with shows. The Petitioner, however, did not offer adequate evidence, such viewership statistics, establishing that the websites are considered as major media.

Finally, the record includes a letter from senior director of global public relations at the company that produces shows. indicated that the Petitioner participated in filmings on and The record also contains screenshots of the Petitioner during television segments on and local news channels such as and While several of these television shows constitute major media[1], the Petitioner did not provide transcripts or recordings of these segments to demonstrate that they were about the Petitioner. In addition, the

[1] Some of the television segments were on local news channels and the Petitioner did not provide documentation to establish that they are major media.

documentation does not include the title, date, and author of the material as required pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(iii).

For the reasons discussed above, the petitioner has not submitted evidence that meets the requirements of this criterion.

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 record contains evidence of the Petitioner's skating performances with various exhibitions at arenas and ice rinks. Accordingly, we find the Petitioner satisfies this criterion.

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 argues that his contribution as a principal performer and line captain have been critical to , the producer of shows. In general, a leading role is evidenced from the role itself, and a critical role is one in which a petitioner was responsible for the success or standing of the organization or establishment.

The Petitioner states that he is a principal performer who stars in lead roles in the shows, and holds the important position of line captain. In a letter by senior director of human resources of he explained that the company currently has 12 productions that are touring either in United States or around the world. The Petitioner did not sufficiently explain or demonstrate that his role as a principal performer for one show out of 12 productions constitutes a leading role for the overall organization.

In regards to whether the Petitioner holds a critical role for the record contains a letter from performance director, who stated that due to the Petitioner's "great versatility and extraordinary talent, [he] has skated in a large variety of leading roles from Character to Solo to Pair skating roles." She also explained that he is a line captain which is "in essence a staff related position as he works very close to the Performance Director." As line captain, he assists in teaching the choreography to the cast, "facilitating the process to help the show take shape," and "assisting in the audition process when scouting for new talent."

In addition, the Petitioner provided other recommendation letters explaining his role for For example, a letter from a former choreographer of stated that the Petitioner has originated many roles with and "he was instrumental in creating the role and his work in each contributed to the overall strength of the show adding great value and wonderful reviews for talent director – production coordinator of stated in a letter that the Petitioner is an "important and valued world-class performer in this company." She goes on to state that we "value [the Petitioner's] contributions to our productions and hope to have [him] as a lead performer for several years to come as he continue to evolve as an athlete and performer." In a

letter by [redacted] he states that the Petitioner is a feature skater and he is an "outstanding member of our cast bringing exceptional skating abilities and showmanship that are crucial to the success of our productions." The record includes additional letters of recommendation from skaters and choreographers that worked with the Petitioner on the [redacted] shows, who indicate that he is a great skater with technical skill and presence that served in several principle roles for different [redacted] productions.

Although the individuals confirm the importance of his contributions to various specific [redacted] shows, they do not establish that he performed in a critical role for [redacted] as a whole, and such as by showing he influenced its overall reputation or status, or was responsible for the success of the organization. In addition, the record reflects that [redacted] currently has 12 [redacted] productions that are touring either in United States or around the world, and the Petitioner has not shown that his role as a principal performer in one of those shows constitutes a critical role for the company. While the Petitioner worked on various projects for [redacted] throughout the years, and thereby supported its mission, he did not provide sufficient documentary evidence to show that his duties and responsibilities as an ice show figure skater were critical to the greater organization.

For the reasons discussed above, the Petitioner did not demonstrate that he satisfies 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 Petitioner claims that the plain language of the criterion requires a determination of remuneration as compared to others in the field, rather than the field as a whole. We interpret "in the field" to require a comparison against similarly employed ice skaters in the larger field rather than solely comparing to others at the Petitioner's place of employment. In addition, he states that [redacted] is the "largest and most prestigious ice show production company in the industry" and thus, is able to offer "worthy performers a higher remuneration than any of its competitors."

The Petitioner submitted Forms W-2 for two individuals employed by [redacted] as principal or specialty performers. These employees received an annual salary of $26,549 and $32,359, as compared to the Petitioner's annual salary of $46,524. We do not find that the Petitioner's submission of salaries from a limited and specific selection of individuals satisfies this criterion. While the documentary evidence reflects that the Petitioner earns a higher salary than the submitted few samples, he did not demonstrate that he has commanded a high salary when compared to others in his field generally.[2]

In addition, a letter from [redacted] board of directors of [redacted] stated that "our research shows that, in comparison to most positions of lead role, [the Petitioner] can easily demand twice that standard compensation for an ice show," and that "compensation at that rate is completely commensurate with the performer's high level of talent and ability." Although this letter attested

[2] Moreover, we note that without the employment contracts for these individuals, the Petitioner did not establish whether they worked the same amount of shows, which impacts their salaries.

that the Petitioner "can" demand a higher salary, it does not provide evidence that he actually does command a high salary for services in relation to others in the field, or that he has commanded such a salary in the past. Also, did not indicate an average salary for experienced ice show performers to compare with the Petitioner's salary.

The Petitioner submitted evidence that his salary "falls in the top 10% of all skaters" employed by This evidence shows that he is at the higher end of the spectrum for his employer rather than evidence showing that his salary is at the top of the greater field of ice skaters. Thus, it does not establish whether his salary is high relative to others performing similar work. *See Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994) (considering a 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).

According to the Petitioner, his position of ice show figure skater is similar to the occupational categories of "Dancers" or "Entertainers and Performers, Sports and Related Workers, All others" as discussed in the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook.* He submitted the "Online Wage Library – FLC Wage Search Results" listing the prevailing wage "dancers" and "entertainers and performers, sports and related workers, all others." On appeal, he notes that his salary is higher than the Level 4 wages of these two occupational categories, which are listed as $27,893 and $42,390 respectively. Although this data shows that that the Petitioner's earnings exceeded the prevailing wage paid to fully competent individuals in these fields, the record does not sufficiently show that such wages qualify as high, or that the data regarding these broad categories represents an appropriate comparison against individuals engaged in similar work.

For the reasons discussed above, the Petitioner has not established that he meets 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, we advise that we have reviewed the record in the aggregate, concluding that it does not support a finding that the Petitioner has established the level of expertise required for the classification sought. 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 P-B-M-*, ID# 836834 (AAO Jan. 25, 2018)