U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF F-H-

DATE: JAN. 25, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a dancer and choreographer, 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 Nebraska Service Center denied the Form I-140, Immigrant Petition for Alien Worker, concluding that the Petitioner did not satisfy, as required, at least three of the ten initial evidentiary criteria.

On appeal, the Petitioner submits a brief, stating that he has received a major, internationally recognized award and meets four of the ten regulatory criteria. In addition, he maintains that he has established eligibility for the classification.

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

I. LAW

Section 203(b)(1)(A) of the Act makes visas available to qualified foreign nationals 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 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 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).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material 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 a dancer and a choreographer. On appeal, he states that his receipt of two [redacted] Awards qualify as a one-time achievement that is a major, internationally recognized award. *See* 8 C.F.R. § 204.5(h)(3). The record is insufficient to support his statement. Specifically, while he has shown that the awards are recognized in Canada, he has not demonstrated that they are recognized internationally. *See* H.R. Rep. 101-723, 59 (Sept. 19, 1990), reprinted in 1990 U.S.C.C.A.N. 6710, 1990 WL 200418 at *6739 (citing to the internationally recognized Nobel Prize as an example of a one-time achievement).

Notwithstanding the above, however, the Petitioner has submitted evidence that satisfies at least three of the ten criteria listed under 8 C.F.R. § 204.5(h)(3)(i)-(x). In addition, he has demonstrated his sustained national or international acclaim and established that he is among the small percentage at the very top of the field of endeavor. *See Kazarian*, 596 F.3d at 1115.

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 record confirms that the Petitioner has received lesser nationally recognized awards for excellence in choreography. For his work on [redacted] he received a [redacted] Award for outstanding choreography in a play or musical in 2007. For his work on [redacted] he received his second [redacted] Award for outstanding original choreography in 2010. He offers materials explaining that the [redacted] presents the [redacted] Awards annually to recognize excellence in theatre, dance, and opera productions. The record, including copies of books and online materials, indicates that in the field of musical theater, the [redacted] Awards are "Canadian equivalent of" or "Canada's version of" the American Broadway Antoinette Perry Awards, commonly known as the Tony Awards. Stephen Harper, Prime Minister of Canada from 2006 to 2015, calls the [redacted] Awards "prestigious"; the 2012 [redacted] states that the awards are "long-standing"; and the book [redacted] notes that they are "major" awards in Canada. In light of the above, the Petitioner has met 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).

While the Director concluded otherwise, the record contains sufficient documents demonstrating that the Petitioner meets this criterion, which requires a showing that his work was artistic in nature and was on display at artistic exhibitions or showcases. The record, including theater reviews, confirms that the Petitioner has been a dancer and a choreographer for many years, and has displayed his work at artistic venues. He presents a printout from the U.S. Bureau of Labor Statistics explaining that "[d]ancers and choreographers use dance performances to express ideas and stories." According to Britannica.com, choreography is "the art of creating and arranging dances."

The Petitioner was the choreographer and lead dancer for [redacted] an "action-musical" based on the lives of two famous concubines of [redacted] (618-907). A [redacted] review explains that the production tells "extraordinary stories, conjuring imperial China with a thrilling combination of ballet, Chinese opera, martial arts, sumptuous sets, lavish costumes, and cirque-like diversions."[1] Another review details the Petitioner's choreography, stating that "[t]he noble characters dance[d] in Western ballet mode, the female corps perform[ed] numerous folk- and [redacted]-inspired routines and the male corps execute[d] martial arts demonstrations."[2] [redacted] reports that the performance includes elements of "magic, martial arts, music, acrobatics and dance" and "goes to great heights of visual splendor through costumes, scenic design and amazing action."[3] These theater reviews confirm that the Petitioner's choreography and performances were artistic in nature. They further verify that his work was on

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[1] [redacted] accessed on October 17, 2017, and incorporated into the record of proceedings.

[2] [redacted] accessed on October 17, 2017, and incorporated into the record of proceedings.

[3] [redacted] accessed on October 17, 2017, and incorporated into the record of proceedings.

display at artistic venues, including the [redacted] the [redacted] and the [redacted]

Similarly, the Petitioner's choreography in [redacted] satisfies this criterion. [redacted] describes the production as "kungfu meets musical theater in [a] fast paced 'action musical.'"[4] A promotional material confirms that the "show's backbone of dance choreography was designed by [the Petitioner]." The record also verifies that [redacted] was displayed at a number of artistic venues, including the [redacted] and the [redacted] In light of the above, the Petitioner has met 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 satisfies this criterion based on the role he performed for [redacted] a theatrical production company based in [redacted] According to [redacted] the president and director of the company, the Petitioner was the chief choreographer for "several full-scale dance musicals such as [redacted] [and] [redacted]' which the company produced. [redacted] letter and other documents in the record, including reference letters, illustrate that as the chief choreographer, the Petitioner performed a critical role for the company. In addition, he has presented evidence confirming that [redacted] is an organization with a distinguished reputation. Specifically, its [redacted] and [redacted] both of which the Petitioner had choreographed, won [redacted] Awards in 2007 and 2010, respectively. As discussed, these awards are nationally recognized and are the "Canadian equivalent of" or "Canada's version of" the Tony Awards. As such, the Petitioner has met this criterion.

B. Final Merits Determination

The Petitioner has submitted the requisite initial evidence. Specifically, he has provided documentation that meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x). As such, we will evaluate whether he has demonstrated, by a preponderance of the evidence, that he has sustained national or international acclaim and is one of the small percentage at the very top of the field of endeavor, and that his achievements have been recognized in the field through extensive documentation. In a final merits determination, we analyze the Petitioner's accomplishments and weigh the totality of the evidence to determine if his successes are sufficient to demonstrate that he has extraordinary ability in the field of endeavor. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20. Here, the Petitioner has shown his eligibility.

[redacted] accessed on October 17, 2017, and incorporated into the record of proceedings.

The record illustrates that the Petitioner has sustained acclaim as a dancer and choreographer in his native country of China, as well as in Canada. In China, he and his work have received significant media attention. For example, a major Chinese television network has broadcasted his dance choreography. According to a senior editor, has shown the Petitioner's and on its programs and "many times" and received "high ratings." has interviewed the Petitioner about his work on explains that presents "only China's top dance programs" and "only China's top dancers and choreographers." He further provides that is "the most important and authoritative window for . . . dance to be displayed on the TV screen" and "[o]nly [interviews] Chinese dance celebrities." Moreover, the record includes materials from the confirming that has "16 internationally broadcast channels and over 1.2 billion viewers" and "is a powerhouse in conveying Chinese news and entertainment." Similarly, a report from verifies that is China's "most important state broadcaster and news broadcasting company" and "remains the main news source for the Chinese people."

Not only has the Petitioner received media attention in China, his work, both as a dancer and a choreographer, has also been displayed at artistic venues in China and North America, as well as at important international events. For example, his work was performed at the and the Moreover, according to a Chinses dance critic, the Petitioner's was performed "during the 2008 and "during the 2010 [at] the A promotional material for the production states that it premiered at the that celebrated the 2008 and that in 2010 it was performed in Canada, to celebrate the

In addition, the Petitioner has worked for a prominent performing arts organization in China. He served as the chief dancer and a choreographer for the Documents in the record state that the "is the largest and the art theater in China" and "its classical stage works, superb performance art and first-class talent earned very high evaluation and reputation from audience all over China and abroad." an accomplished Chinese dancer and actor, provides that the entity is "China's most stringent performing [arts] organization." also confirms that the organization is "where the highest artistic standard in China is held."

Furthermore, the Petitioner has received nationally recognized awards in China, including a silver medal "in " Materials in the record explain that the "is a national dancing award approved by and aiming at rewarding national level of dancing professionals, extraordinary choreography, and outstanding performers and dance creators." The Petitioner has also been recognized by receiving its "best director award in the excellence repertoire" in 2015, "outstanding performance award in performances of

competitions in the [redacted] of [redacted]' in 1999, and "third prize in Chinese classical dance youth category" in 1997. Information from the Chinese embassy in [redacted] notes that "[t]he highest cultural administrative organ in China is the [redacted] which is . . . in charge of cultural and artistic undertakings throughout the country."

Finally, the Petitioner's acclaim reaches outside of China. As discussed, he won a [redacted] Award for outstanding choreography in a play or musical in 2007, which according to a number of references was the first time a Chinese artist had won this accolade in Canada. He won a second [redacted] Award in 2010 for outstanding original choreography. Canada's former [redacted] calls these awards "prestigious" and indicates that they celebrate excellence in theatre, dance, and opera. Canada's former [redacted] similarly says the awards are "prestigious," noting, "[b]eing nominated for an award of this caliber is a tremendous honor and [he] commend[s] each and every nominee and award winner on their achievements." The record includes evidence showing that major Canadian news outlets, such as the [redacted] have reported on the [redacted] Awards and award recipients, including the Petitioner.

In light of the record, including documents verifying the Petitioner's accomplishments in China and Canada, he has demonstrated his extraordinary ability in the arts. Specifically, he has established, by a preponderance of the evidence, that he has sustained national or international acclaim and is one of the small percentage at the very top of the field, and that his achievements have been recognized in the field through extensive documentation.

III. CONCLUSION

The Petitioner has submitted the required initial evidence, and demonstrated in the final merits determination that he is a dancer and a choreographer of extraordinary ability. He has also shown that he will continue work in his area of extraordinary ability[5] and that his entry will substantially benefit prospectively the United States.

ORDER: The appeal is sustained.

Cite as *Matter of F-H-*, ID# 607053 (AAO Jan. 25, 2018)

[5] The Petitioner's employment contract indicates that he will work for [redacted] and choreograph new productions for the company.