U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF M-L-R-

DATE: JAN. 25, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a composer, lyricist, and performer, 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 petition, concluding that the record did not establish, as required, that the Petitioner satisfied at least three of the regulatory requirements.

On appeal, the Petitioner submits additional evidence and asserts that the Director did not properly assess the record.

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

I. LAW

Section 203(b)(1)(A) of the Act describes qualified immigrants for this classification as follows:

> (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). Where a petitioner demonstrates that certain of these criteria are not readily applicable to the occupation, comparable evidence is acceptable. 8 C.F.R. § 204.5(h)(4).

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).[1] 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 award-winning composer and lyricist who has written distinguished songs and musicals, including an award-winning show. In 2011, he wrote a collection of songs for the television series [redacted] The Director found that the Petitioner satisfied the awards criterion[2] but did not meet any others. For the reasons discussed below, the Petitioner also satisfied the published materials criterion and the judging criterion.[3] We further note that the record contains comparable evidence to the display criterion.[4] Finally, considering all of the submissions in the aggregate, including achievements we do not address under the criteria, he has demonstrated national or international acclaim.

A. Evidentiary Criteria

The Director determined that the Petitioner met a single criterion as the recipient of several awards that have garnered him thousands of dollars. For example, he received the [redacted] Prize for Music Theatre. Several newspapers covered the award selection, including the [redacted] and [redacted] Accordingly, the Director correctly concluded that the Petitioner satisfied the awards criterion

[1] This case discusses 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).
[2] 8 C.F.R. § 204.5(h)(3)(i).
[3] 8 C.F.R. § 204.5(h)(3)(iii), (vi).
[4] 8 C.F.R. § 204.5(h)(3)(vii).

at 8 C.F.R. § 204.5(h)(3)(i). At issue, then, is whether he meets an additional two criteria. For the reasons discussed below, we find that he has.

> *Published materials 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).

While not all of the articles are specifically about the Petitioner, several are and appear in major media. For example, the record contains " in the in and "[The Petitioner] in the The record contains independent information with the readership numbers for the and the consistent with a finding that these are major media publications in Australia. Accordingly, the Petitioner has 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 Petitioner served as one of three paid judges for the initiative that supports organizations presenting musical theater. The selection criteria include the artistic merit of the project and some awardees received over $100,000 in grant money. We find that the artistic merit of a musical theater project falls within the Petitioner's field or an allied field. Accordingly, he meets this criterion.

B. Comparable Evidence

The regulation at 8 C.F.R. § 204.5(h)(4) allows a Petitioner to offer comparable evidence where certain criteria do not readily apply to the individual's occupation. In addition to meeting three criteria, we further note that the record contains comparable evidence of the Petitioner's work on display at artistic exhibitions or showcases. 8 C.F.R. § 204.5(h)(3)(vii). "Display" implies a visual component to the exhibition or showcase whereas the Petitioner's compositions are for listening entertainment. Thus, we are satisfied that this criterion does not readily apply to composers and lyricists rather than it being a difficult one for them to meet. Moreover, the evidence we are considering here does not fall directly under a separate criterion.[5] Specifically, three singers performed the Petitioner's songs in " [the Petitioner]" at the in New York. In addition, " of [the Petitioner]" in Australia featured his "most acclaimed songs." Two websites favorably reviewed the latter program and reviewed the original cast recording on compact disc.

[5] We interpret the provision allowing comparable evidence to admit exhibits that would otherwise not receive consideration under the initial analysis. Where an existing criterion directly addresses a type of documentation, we need not also analyze such material under this provision.

When considering whether an item is comparable, we look at the overall quality. In this matter, a revue or compilation that celebrates musical compositions at a distinguished venue and receives favorable reviews is sufficiently analogous to a visual artistic display.

C. Final Merits Determination

As noted above, the Petitioner is an award-winning composer and lyricist. Several news outlets have reported on his selections for these awards, garnering him recognition. His musical, was nominated for the Award and he received the $50,000 Prize for that play. Awards are Australia's premier national awards for the live performance industry. which has the highest readership in Australia, and favorably reviewed that show, which reflects its critical acclaim.

The record contains numerous articles in major media featuring the Petitioner and his success in the musical theater industry. For example, the article in characterizes his skills as well recognized. In 2015, the selected 10 of the Petitioner's songs to include in their syllabus for the country's first national program for musical theater study, suggestive of their recognition of his importance to Australian musical theater. Performances celebrating his songs took place in Australia, resulting in a compact disc release, and in New York. These events garnered him not only exposure but the nature of the venues, the promotion of the events as celebrating his work, and the level of media coverage is consistent with name recognition. In 2013, the selected the Petitioner as one of four $100,000 fellowship recipients, with the funds designed to support his development of four new musicals, an achievement that the Australian media reported, consistent with his acclaim in that country.

Finally, as part of the Petitioner's career, he performed the title role in with the While much of the evidence relates to his compositions, we are satisfied that his performances are reflective of his overall talent and acclaim in the musical theater industry as a whole, a relevant consideration in the final merits determination. Considering all of the evidence in the aggregate, we are satisfied that the Petitioner enjoys national or international acclaim and is within the small percentage at the top of his field.

III. CONCLUSION

The Petitioner presented the requisite initial evidence and the record in the aggregate demonstrates his acclaim and status at the top of the field.

ORDER: The appeal is sustained.

Cite as *Matter of M-L-R-*, ID# 597102 (AAO Jan. 25, 2018)