U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37765000

Date: JUL. 3, 2025

Appeal of Service Center Operations (SCOPS) Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, a musician, 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.

Service Center Operations (SCOPS) denied the petition, concluding that the record did not establish that the Petitioner met the requirements for classification as an individual of extraordinary ability. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

Section 203(b)(1)(A) of the Act makes visas available to 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). The regulation at 8 C.F.R. § 204.5(h)(4) allows a petitioner to submit comparable material if he or she is able to demonstrate that the standards at 8 C.F.R. § 204.5(h)(3)(i)-(x) do not readily apply to the individual's occupation.

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 previously performed as a musician and indicates that his current endeavor is to work as a music director in the United States. Because he has not indicated or established that he has 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 determined that the Petitioner did not meet any of the evidentiary criteria under 8 C.F.R. § 204.5(h)(3)(i)-(x). On appeal, the Petitioner maintains that he fulfills four criteria, discussed below. We have reviewed all of the evidence in the record and conclude that it does not support a finding that the Petitioner satisfies the requirements of at least three 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 Petitioner claims to meet this criterion based on participating as a musician on the Album [redacted] that won the [redacted] for Best [redacted] in 2020. As evidence to support this claim the Petitioner provided a copy of a certificate "in recognition of your participation as Musician" on the album. SCOPS determined that the applicant failed to establish that the certificate he received constitutes nationally or internationally recognized achievement in his field of endeavor. Specifically, that the Petitioner was seeking to work in the United States as a music director, and that the certificate he received for participation as a musician on the album did not relate

to his abilities as a music director. Nor did the Petitioner provide evidence that a "certificate of participation" from the [redacted] is viewed as nationally or internationally recognized award.

On appeal, the Petitioner re-iterates that without his contributions as a musician, the album would not have had the same level of success. The Petitioner also provides information related to the [redacted] the status of the [redacted] as one of the most important music awards in the world, and evidence defining who receives a "winner's certificate." According to the evidence provided by the Petitioner, a winner's certificate is presented to "mastering engineer(s), and to producer(s), engineer(s), and mixer(s) of less than 51% of the total playing time." The list of eligible individuals provided by the Petitioner does not include musicians. Moreover, the Petitioner has not established that his "certificate of participation" is equivalent to a "winner's certificate." Even if the Petitioner did establish that he won a [redacted] award as a musician, it would still not relate to his claimed area of extraordinary ability as a Music Director.

For these reasons, the Petitioner did not demonstrate that he satisfies this criterion.

> *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 satisfies this criterion through his membership in [redacted] The Director determined that while the Petitioner established he was a member of the organization, he did not establish that the organization requires outstanding achievement in their discipline as a condition of membership. On appeal the Petitioner states that [redacted] requires the publication and distribution of work to become a member. According to the bylaws provided by the Petitioner, an application for membership "shall be accompanied by a list of the musical or literary-musical works" authored by the applicant. The bylaws do not require that the musical works of the individual be of a specific quality, that they are award winning, or that they are otherwise recognized as outstanding achievements.

In order to satisfy the regulation at 8 C.F.R. § 204.5(h)(3)(ii), the Petitioner must show that membership in the association is based on being judged by recognized national or international experts as having outstanding achievements in the field for which classification is sought.[1] While the composition and publication of musical works is a commendable accomplishment, it is not sufficient to establish outstanding achievement in the field. Accordingly, the Petitioner has not established that [redacted] requires outstanding achievement of its members, as required.

Accordingly, the Petitioner did not show that he fulfills this criterion.

On appeal, the petitioner argued that he met four of the criteria at 8 C.F.R. 204.5(h)(3)(i)-(x). As he has not established two of these four criteria, he cannot show that he meets a total of three criteria and

[1] *See* U.S. Citizenship and Immigration Services (USCIS) Policy Memorandum PM 602-0005.1, *supra*, at 6 (providing an example of admission to membership in the National Academy of Sciences as a Foreign Associate that requires individuals to be nominated by an academy member, and membership is ultimately granted based upon recognition of the individual's distinguished achievements in original research).

further discussion of the other claimed criteria would serve no meaningful purpose. Accordingly, we reserve the Petitioner's arguments related to his contributions of major significance to his field and display of his work in the field at artistic exhibitions and showcases. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (per curiam) (holding that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision).

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 acclaim and recognition required for the classification sought.

The Petitioner seeks a highly restrictive visa classification, intended for individuals 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. *See Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994). Here, the Petitioner has not shown that the significance of his work 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, nor that 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 and 8 C.F.R. § 204.5(h)(2).

For the reasons discussed above, the Petitioner has not demonstrated his eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, the petitioner bears the burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012). Here, that burden has not been met.

ORDER: The appeal is dismissed.