U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF A-B-A-

DATE: JUL. 5, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, an engineer, seeks classification as an individual of extraordinary ability in the sciences. *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 had not received a major, internationally recognized award, and had not satisfied any of the ten initial evidentiary criteria, of which he must meet at least three.

On appeal, the Petitioner argues that his evidence met the eligibility requirements for an individual of extraordinary ability.

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 it is able to demonstrate that the standards at 8 C.F.R. § 204.5(h)(3)(i)-(x) do not readily apply to a beneficiary'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 is a project assistant engineer at [redacted] in [redacted] Missouri. Because the Director found that the Petitioner did not establish that he received a major, internationally recognized award under the regulation at 8 C.F.R. § 204.5(h)(3), and 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 initial evidentiary criteria.

In addition to his statements he made on his Form I-290B, Notice of Appeal or Motion, the Petitioner indicated that he would be submitting a brief and documentation within 30 days of the filing of the appeal. However, as of the date of this decision, we have received nothing further. Accordingly, the record is considered complete as it now stands. On his Form I-290B, the Petitioner makes references to the one-time achievement and three criteria, discussed below. We have reviewed all of the evidence in the record of proceedings, and it does not support a finding that the Petitioner has a one-time achievement or fulfills the plain language requirements of at least three criteria.

A. One-Time Achievement

The Petitioner claimed that his award at the [redacted] constitutes a one-time achievement. The Director determined that the Petitioner's evidence, which included the competition's rules and a letter from [redacted] did not show that the award is internationally recognized as a major award. On appeal, the Petitioner asserts that the Director "did not understand the provided evidences," and he "will provide adequate convincing details in the brief which [he] will be sending out to [us] in due time."

Given Congress' intent to restrict this category to "that small percentage of individuals who have risen to the very top of their field of endeavor," the regulation permitting eligibility based on a one-time achievement must be interpreted very narrowly, with only a small handful of awards qualifying as major, internationally recognized awards. *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. The House Report specifically cited to the Nobel Prize as an example of a one-time achievement; other examples which enjoy major, international recognition may include the Pulitzer Prize, the Academy Award, and an Olympic Medal. The regulation is consistent with this legislative history, stating that a one-time achievement must be a *major, internationally recognized* award. 8 C.F.R. § 204.5(h)(3). The selection of Nobel Laureates, the example provided by Congress, is reported in the top media internationally regardless of the nationality of the awardees, reflects a familiar name to the public at large, and includes a large cash prize. While an internationally recognized award could conceivably constitute a one-time achievement without meeting all of those elements, it is clear from the example provided by Congress that the award must be global in scope and internationally recognized in the field as one of the top awards.

We agree with the Director's evaluation of the evidence. While the Petitioner's documentation related to the rules of the competition and confirmed his participation, it did not show that the award is internationally recognized as a "one-time achievement." The regulation at 8 C.F.R. § 204.5(h)(3) requires the one-time achievement to be "a major, international[ly] recognized award." The documentation, however, does not discuss the international stature or reputation of the event or otherwise indicate that the award is recognized as a major, international award. The Petitioner did not present, for example, evidence that the competition or award is widely reported by international media comparable to other major, globally recognized awards such as Oscar or Olympic medal winners. Accordingly, the Petitioner has not demonstrated that he meets the requirements of a one-time achievement.

[1] [redacted] department manager at the [redacted] confirmed that the Petitioner participated in a robotics senior design and "[c]redit was awarded once the design was showcased at the competition and the robot has now been donated to [redacted] Robotics team for educational purposes."

B. 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 Director determined that the Petitioner's from the in Nigeria, did not fulfill this criterion. The Petitioner does not reference or contest the decision of the Director for this criterion. Although the Petitioner submitted the eligibility requirements to apply for the scholarship and letters confirming the selection criteria and his receipt of it, the record does not demonstrate that the award is nationally or internationally recognized for excellence in the field consistent with the regulation at 8 C.F.R. § 204.5(h)(3)(i). As such, we agree with the findings of the Director that the Petitioner did not establish that he satisfies this criterion.

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 record contains a letter from broadcaster for who stated that he interviewed the Petitioner twice on programs in October and November 2015 relating to his robotics invention. In addition, indicated that he was the publisher for two October and November 2015 articles about the Petitioner and his robotics projects that were posted on dandalinvoa.com, and the record includes screenshots of the articles. On appeal, the Petitioner asserts that the media that published his work is not a local media and has a significant national distribution, and he "will articulate the issue in the brief document."

While claimed that the radio program "had an audience of over 45 million people," and website has "over fifty thousand plus," the Petitioner did not provide any supporting evidence, such as rating or circulation statistics from independent sources, to demonstrate professional or major trade publications or other major media. Moreover, the Petitioner did not present the transcript of the radio interview to establish that it reflects published material about him relating to his work. Furthermore, the screenshots reflect quotes by the Petitioner rather than published material about him. Accordingly, the Petitioner has not shown that he meets 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).

The Director concluded that the Petitioner's submission of recommendation letters, including one from volunteer and outreach manager for did not demonstrate that he made original contributions of major significance in the field. On appeal, the Petitioner claims that he "did not provide the reference letter as an [sic] evidence to fulfill the criteria

[sic]," that he "provided other documents to serve as evidence," and that "[t]here is a discrepancy or a mistake by the officer who reviewed the case."

At the initial filing of the petition, the Petitioner specifically indicated that the letter from [redacted] reflected his contribution in the field. Moreover, the record does not contain evidence, including his recommendation letters, showing that his contributions are majorly significant in the field. Further, the Petitioner has not identified which evidence he claims demonstrates his eligibility for this criterion. For these reasons, the Petitioner has not met his burden of showing that he has made original contributions of major significance in the field.

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 found that the Petitioner's participation at the [redacted] did not qualify for this criterion because it was scientific in nature rather than artistic. On appeal, the Petitioner asserts that "[t]here is a lot more of artistic in it," and he "will detail [his] justification in [his] review letter that would be sent to [us] shortly." In order to demonstrate eligibility for this criterion, the Petitioner must show that his work was on display, and the venues were artistic exhibitions or showcases.[2] Here, the Petitioner has not shown that the scientific competition constituted an artistic venue that displayed his work. Accordingly, we concur with the Director's assessment, and the Petitioner did not establish 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 acclaim and recognition 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 A-B-A-*, ID# 1495269 (AAO Jul. 5, 2018)

[2] *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/policymanual/HTML/PolicyManual.html.