U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF J-L-K-

DATE: JULY 26, 2017

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, an actor and acting coach, 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 ten initial evidentiary criteria, of which he must meet at least three.

On appeal, the Petitioner contends that he meets six criteria and requests that we reconsider the decision denying the petition.

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). Alternatively, he or she must provide documentation that meets at least three of the ten categories of evidence listed at 8 C.F.R. § 204.5(h)(3)(i)-(x) (including items such as awards, memberships, and published material in certain media).

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

According to a letter of support from [redacted] owner of the [redacted] in Canada, the Petitioner has worked at that studio as an acting coach for the past five years. In addition, the Petitioner stated that he has "had talks with production companies and agents . . . about starting an acting school as well as continu[ing] to act on their rosters." As he has not established that he has received a major, internationally recognized award, the Petitioner must satisfy at least three of the ten criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). On appeal, he asserts that he meets the following criteria: membership at 8 C.F.R. § 204.5(h)(3)(ii), published material at 8 C.F.R. § 204.5(h)(3)(iii), judging at 8 C.F.R. § 204.5(h)(3)(iv), leading or critical role under 8 C.F.R. § 204.5(h)(3)(viii), high salary under 8 C.F.R. § 204.5(h)(3)(ix), and commercial successes at 8 C.F.R. § 204.5(h)(3)(x). Upon review of all of the evidence, we conclude that it does not support a finding that the Petitioner meets the plain language 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).

Although the Petitioner does not claim this criterion on appeal, we note that the record contains a photograph of him holding a trophy. The award in the photograph, however, is not identified. In addition, the Petitioner offered two undated certificates acknowledging his [redacted] nominations for [redacted] and [redacted] The record, however, does not include sufficient evidence to demonstrate that the nominations and the unidentified trophy are nationally or internationally recognized prizes or awards for excellence in acting.

In addition, he submitted a letter of support from a Canadian broadcast television producer, who stated:

> [The Petitioner] lent his talents to philanthropic causes for serving as host for our national anti-bullying campaign in 2010. [The Petitioner] was host and subject of a winning documentary series that was the central focus of a very important campaign for our network.

Without corroborative evidence indicating that the Petitioner received a or that such an award is a nationally or internationally recognized prize or award for excellence in acting, he has not established that he meets this regulatory 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 record includes a letter from a membership representative for the stating that the Petitioner is a member in good standing. also asserted that "[t]o become eligible for membership, performers must fulfill the requirements of by competing against already established members in order to obtain three professional credits in the union's jurisdiction. In addition, full member applicants are required to take a Member Training course." The Petitioner, however, has not demonstrated that obtaining three professional credits and completing a member training course constitute outstanding achievements. Furthermore, the evidence does not indicate that members' achievements are judged by recognized national or international experts. The Petitioner therefore has not established that he meets 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 Petitioner contends that "[t]here were numerous newspaper, magazine, and online articles" submitted for this criterion, but he does not point to any specific articles, nor does the record include evidence to support his claim. As the Petitioner has not offered articles about himself in professional or major trade publications or other major media, he has established that he meets this regulatory 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 record includes a letter from [redacted] indicating that the Petitioner worked at the [redacted] as an acting coach. In his appeal brief, the Petitioner contends that his job in the studio's acting program involves making judgements on others' performances. Providing instruction and training to acting students is not tantamount to participation as a judge of the work of others. The phrase "a judge" implies a formal designation in a judging capacity, either on a panel or individually as specified in the regulation at 8 C.F.R. § 204.5(h)(3)(iv). Informal instances of evaluating one's students as an acting coach do not meet the elements of this criterion. Furthermore, [redacted] letter offered no description of how the Petitioner participated as a judge of the work of others at the [redacted] If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for a petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998). The letter from [redacted] lacks specific information about the actors whose work the Petitioner judged and the performances he evaluated. Additionally, the Petitioner did not offer documentary evidence of his evaluations showing that he participated as a judge of the work of others consistent with this regulatory criterion. Without supporting evidence, the Petitioner has not 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).

The Petitioner provided documentation indicating that he performed in television productions, including [redacted] and [redacted] Accordingly, he meets this regulatory 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 record contains letters from [redacted] and [redacted] producers and co-creators of [redacted] producer of [redacted] and [redacted] chairman and chief executive officer of [redacted] a Canadian television content producer and distributor, stating that the Petitioner performed in a leading role as a main character for the television shows [redacted] and [redacted] The letters from [redacted] and [redacted] also mention that [redacted] was the recipient of a [redacted] for "[redacted]" but the record does not include information about this award or its level of prestige. The evidence offered is insufficient to show how the Petitioner's role for the aforementioned television shows was leading or critical for organizations or establishments, or to demonstrate that that they have earned a distinguished reputation. The Petitioner therefore has not established that he meets 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 submitted paystubs and weekly timesheets from 2009 for [redacted] According to his last paystub dated April 28, 2009, the Petitioner's year-to-date gross pay was $100,976. In addition, he provided two bank account statements reflecting balances of $78,496 and $49,239 as of September 30, 2016. The Petitioner, however, offers no basis for comparison indicating that he commanded a high salary relative to others in his field. The Petitioner must present evidence showing that he earned a high salary or significantly high remuneration in comparison with those performing similar services in the field. We find that the record includes insufficient documentation to establish that the Petitioner meets this regulatory criterion.

Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales. 8 C.F.R. § 204.5(h)(3)(x).

The Petitioner contends that the letters from [redacted] and [redacted] illustrate that the television shows in which he performed "have been sold to networks around the world" and therefore are indicative of his commercial successes in the performing arts. For example, [redacted] asserted that [redacted] "ran on [redacted] in Canada, [redacted] in the U.S., and sold around the world." In addition, [redacted] stated that [redacted] and [redacted] "have aired on both [redacted] and [redacted] and that the "shows are broadcast in more than 25 countries around the world." None of the aforementioned references' statements include or are supported by objective ratings data or sales statistics to substantiate the commercial success of [redacted] and [redacted]

This criterion focuses on volume of sales and receipts as a measure of a petitioner's commercial success in the performing arts. Therefore, the fact that a petitioner has performed in film or television productions would be insufficient, in and of itself, to meet this criterion. The evidence must show that the volume of sales and receipts reflect his commercial success in the performing arts. Without corroborative evidence indicating that the Petitioner's shows have attracted substantial audiences or generated significant sales in the broadcasting market, the documentation submitted is not sufficient to demonstrate that he meets this regulatory criterion.

III. CONCLUSION

The Petitioner is not eligible because he has not submitted the required initial evidence of either a qualifying one-time achievement or documents that meet at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x). Thus, we do not need to fully address the totality of the materials in a final merits determination. *Kazarian*, 596 F.3d at 119-20.[1] Nevertheless, we advise that we have

[1] In addition, as the Petitioner has not established his extraordinary ability under section 203(b)(1)(A)(i) of the Act, we need not determine whether he is coming to "continue work in the area of extraordinary ability" under section 203(b)(1)(A)(ii).

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.

ORDER: The appeal is dismissed.

Cite as *Matter of J-L-K-*, ID# 457574 (AAO July 26, 2017)