U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF T-J-S-K-

DATE: MAR. 15, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a photographer, 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 and additional documentation, stating that he meets at least three of the ten criteria. In addition, he maintains that he has established eligibility for the classification.

Upon *de novo* review, we will dismiss 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 fashion photographer. As he has not established his receipt of a major, internationally recognized award, as initial evidence he must present documents satisfying at least three of the ten criteria under 8 C.F.R. § 204.5(h)(3)(i)-(x).

The Petitioner asserts that he meets the lesser awards criterion under 8 C.F.R. § 204.5(h)(3)(i), the published material criterion under 8 C.F.R. § 204.5(h)(3)(iii), the original contributions criterion under 8 C.F.R. § 204.5(h)(3)(v), and the leading or critical role criterion under 8 C.F.R. § 204.5(h)(3)(viii). We have reviewed the entire record of proceedings, and it does not support a finding that he 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).

The Director determined that the Petitioner did not meet this criterion, and the record supports this finding. The Petitioner submitted documentation showing that he served as a photographer on an advertising campaign that won a [redacted] which honors the "[redacted] However, [redacted] a healthcare communications company, won this award for their advertising campaign entitled [redacted] Although the Petitioner is listed under a section entitled "Talent Credits" as a photographer on this campaign, he did not submit

evidence that he was one of the recipients. Moreover, the [redacted] are presented for excellence in the field of healthcare advertising not the field of photography, his receipt of such an award, had this been established, would not satisfy 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 has offered a number of articles relating to both his personal life and his work as a photographer; however, none of these articles satisfy this criterion. For example, the Petitioner submitted an article published in [redacted] that is about his wedding, but this article does not satisfy this criterion because it relates solely to his personal life and not his photography work. He also submits articles from [redacted] a surfing blog, and [redacted] the online portal for a clothing retailer, that discuss his work, but these do not provide all of the information required by the regulation. An interview transcript under the heading of [redacted] was submitted, but this document neither identifies the author, the date of publication, or the subject of the interview. Moreover, the Petitioner has not established that [redacted] and [redacted] qualify as professional or trade publications or other major media.

Similarly, he submitted copies of features that appeared in [redacted] and [redacted] all of which also appear to be Internet websites. Most of these excerpts simply quote or mention the Petitioner, as opposed to discussing his work, and those excerpts that do discuss his professional accomplishments omit the author's name. Even if the submitted excerpts otherwise qualified as published material about the Petitioner, he did not demonstrate they are professional or major trade publications, or other major media.

> *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).

On appeal, the Petitioner indicates that he "is renowned as a master of the fashion editorial," and asserts that he belongs to a small percentage of photographers who possess this artistry and technical mastery. He contends that numerous testimonials submitted on his behalf were disregarded by the Director, and relies on the statements provided therein as evidence of his original artistic contributions of major significance in the field.

He submitted a letter from [redacted] award winning fashion designer and founder of [redacted] who stated that the Petitioner "is masterful capturing each and every one of his subjects' unique beauty, and creating an unforgettable image." A letter from [redacted] Creative Director at [redacted] states that the Petitioner has shot acclaimed magazine covers and fashion editorials. [redacted], Creative Director at [redacted] states that the Petitioner "is in a league of his own" and has depended on him to shoot its most high-profile ad campaigns. While it is clear that others in the industry admire his work, and that he

has performed satisfactory work for his clients, the record does not sufficiently demonstrate his impact in the field as a whole, or confirm that his influence qualifies as "major significance." The letters lack specificity of how the Petitioner's achievements have affected the field or that his style of photography is being used or reproduced within his field.

Although the record shows that he is an experienced photographer, it does not support a finding that he has made contributions of major significance in the field. While he claims that the "fashion editorial" is his specialty, and has submitted numerous examples of his work as published in various magazines and advertising campaigns, the record does not indicate the extent of the Petitioner's influence on other fashion photographers working in the field, nor does it show that the field has significantly changed as a result of his work. While the Petitioner has earned the admiration of his references and colleagues, the record does not demonstrate that he has made original artistic 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).

Although not asserted by the Petitioner, we find upon *de novo* review that he has met this criterion. The Petitioner's work has appeared in lifestyle and fashion magazines, including and When publishing his photographs, these publications credited him as the photographer. He therefore meets 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).

On appeal, the Petitioner states that "he has played and will continue to play the critically important role of photographer on high-profile assignments for some of today's most distinguished magazines, fashion labels, retailers, and global brands." Documents in the record indicate that he has created fashion editorials for a number of publications and organizations, including a weekly women's lifestyle magazine published by and He, however, has not shown that he performed a leading or critical role for these entities. The record indicates that the Petitioner is not an employee of any of the named publications or organizations; rather, he performs his photography on a freelance basis. Although the record contains testimonials from several of the publications explaining why he was chosen to photograph particular campaigns, the evidence does not demonstrate how his role differentiated him from the numerous other freelance photographers also contributing their work and talents to these publications and organizations. Although the Petitioner has worked as a photographer for these entities, he has not demonstrated how he led them, or how his periodic contributions were critical to their success or standing.

The record also contains evidence demonstrating that the Petitioner's photography was included in advertising campaigns for various fashion labels and designers, including

and Although the Petitioner contends that his work for these distinguished organizations was "critical to the success of high–profile advertorials, advertising campaigns, look books and ecommerce," the record lacks corroborating evidence. While the record contains testimonials from representatives of various organizations praising the quality of his work and affirming that they routinely choose him to work on their campaigns based on his skill and reputation within the industry, they do not identify how his contributions are attributable to the success of these organizations. The Petitioner has not demonstrated that the achievements of these entities are the result of a critical role he performed for them.

III. CONCLUSION

The Petitioner is not eligible for the classification because he has not submitted the required initial evidence of either a 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 need not fully address the totality of the materials in a final merits determination. *Kazarian*, 596 F.3d at 1119-20. Nevertheless, we have 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 T-J-S-K-*, ID# 965338 (AAO Mar. 15, 2018)