U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF A-C-

DATE: MAR. 16, 2017

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a ballroom dancer and instructor, 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 petition, concluding that the Petitioner had satisfied only two of the regulatory criteria, of which he must meet at least three.

On appeal, the Petitioner submits additional documentation and argues that he meets at least one additional criterion.

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

I. LAW

Section 203(b) of the Act states in pertinent part:

> (1) Priority workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):
>
> (A) Aliens with extraordinary ability. – An alien is described in this subparagraph 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 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 that 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).

Satisfaction of at least three criteria, however, does not, in and of itself, establish eligibility for this classification. *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), *aff'd*, 683 F.3d. 1030 (9th Cir. 2012); *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (holding that the "truth is to be determined not by the quantity of evidence alone but by its quality" and that U.S. Citizenship and Immigration Services (USCIS) examines "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"). Accordingly, where a petitioner submits qualifying evidence under at least three criteria, we will determine whether the totality of 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.

II. ANALYSIS

The Petitioner is a ballroom dancer who participates in competitions and events in the United States and Europe and also instructs students. As the Petitioner 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).

A. Evidentiary Criteria

The Director found that the Petitioner met the awards criterion under 8 C.F.R. § 204.5(h)(3)(i). The record reflects that he finished in second place at the 2014 [redacted] supporting the Director's decision. In addition, the Director determined that the Petitioner met the display criterion at 8 C.F.R. § 204.5(h)(3)(vii) based on his performances at hotels and on cruise ships. Moreover, the Petitioner submits evidence on appeal satisfying the judging criterion under 8 C.F.R. § 204.5(h)(3)(iv). Specifically, he served on the judging panel in the juvenile, junior, and youth categories for the [redacted] and [redacted] competitions in [redacted] Belarus. Accordingly, the Petitioner has met at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3).

B. Final Merits Determination

As the Petitioner has submitted the requisite initial evidence, we will evaluate whether the Petitioner has demonstrated, by a preponderance of the evidence, that he has sustained national or international acclaim and that his achievements have been recognized in the field through extensive documentation, making him one of the small percentage who has risen to the very top of the field of endeavor. In a final merits determination, we analyze a petitioner's accomplishments and weigh the totality of the evidence to determine if his successes are sufficient to demonstrate that he has extraordinary ability in the field of endeavor. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20. In this matter, we determine that the Petitioner has not shown his eligibility.

The record indicates that the Petitioner participated in events with his as from January 2003 to December 2011.[1] During that time, his highest finish in the category of the open open competitions was sixth place at the 2004 Ukraine. In total, he had three top ten finishes and 19 finishes that ranged from 14th to 63rd. The Petitioner also presented evidence showing that he received third prize in the program at the 2004 in Ukraine, and first prize in the program at the 2005 in Belarus.

The Petitioner provided a list of his competitions in the United States from September 2014 to June 2016.[2] The evidence shows that the Petitioner competed in five events in the professional category, placing fifth, his highest finish, at the 2014 in Massachusetts. In the professional ballroom section, the Petitioner participated in two events, placing second in the in Massachusetts, and fourth place at the in Massachusetts. We note that these competitions are in the "rising star" division, which "allows professional dancers to compete only if they didn't make it to the third round of the Professional division. This means that the competition is easier at this level."[3]

In considering the totality of his finishes from 2003 to 2014, he received one first place, second place, and third place finish. The Petitioner has not demonstrated, however, that such achievements have garnered his sustained national or international acclaim and that they reflect a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990). Furthermore, awards won by the Petitioner in competitions that were limited by his amateur

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[1] *See* letter from chairperson for the

[2] The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1). Once eligibility is established as of the time of filing, we will also review and consider other evidence in the record.

[3] *See* http://www. accessed on February 28, 2017, and incorporated into the record of proceedings.

status, or in the "rising star" division, do not indicate that he "is one of that small percentage who [has] risen to the very top of the field of endeavor." *See* 8 C.F.R. § 204.5(h)(2). There is no indication that the competitions included performers from throughout the Petitioner's field, rather than being mostly limited to amateur and aspiring dancers. USCIS has long held that even athletes performing at the major league level do not automatically meet the statutory standards for classification as an individual of "extraordinary ability." *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994).

Although he documented his memberships with the and the Petitioner did not submit evidence reflecting the membership requirements to show that these associations require outstanding achievements of their members, as judged by recognized national or international experts. Accordingly, his memberships do not serve as evidence that his "achievements have been recognized in the field of expertise." *See* section 203(b)(1)(A)(i) of the Act and 8 C.F.R. § 204.5(h)(3).

While the Petitioner offered a partial article from the regarding a whose was amputated as a result of the 2013 the article is not about the Petitioner. Rather, the Petitioner is mentioned one time as being a partner at an event.[4] Furthermore, the Petitioner did not demonstrate that a single article published in this newspaper is consistent with sustained national or international acclaim. The Petitioner has not shown that his press coverage is indicative of a level of success consistent with being among "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2).

With regard to his judging experience, the Petitioner participated on a judging panel for two competitions, and The competitions, however, are among juveniles, juniors, and youths, and "[hundreds of young competitors from different Dance Sport studios participate and fight for the title of champion of the city."[5] An evaluation of the significance of the Petitioner's judging experience is acceptable under *Kazarian*, 596 F. 3d at 1121-11, to determine if such evidence is indicative of the extraordinary ability required for this highly restrictive classification. The Petitioner has not shown that his judging experience sets him apart from others in his field, such as by providing evidence that he has served as a judge of acclaimed ballroom dancers or of a prestigious national or international competition rather than students or amateurs at local competitions. Accordingly, the evidence under this criterion does not support a finding that he "is one of that small percentage who [has] risen to the very top of the field of endeavor." *See* 8 C.F.R. § 204.5(h)(2).

Pertaining to his artistic display, the Petitioner has participated in tournaments and competitions. In addition, the Petitioner has performed on cruise ships and at hotel resorts and community events,

[4] The Petitioner also submitted a screenshot indicating that interviewed While it appears that the interview showed the Petitioner dancing with the focus of the interview was not about the Petitioner relating to his work.

[5] *See* letter from deputy director of

such as [redacted] and the [redacted] As it is expected that a dancer, such as the Petitioner, would perform in a dance setting at festivals, exhibitions, and other events, we will evaluate the extent to which the display of his work is reflective of acclaim consistent with this highly restrictive classification. Here, the Petitioner did not establish that his exhibitions garnered attention in a manner consistent with sustained national or international acclaim. Further, he did not demonstrate that his performances brought praise from critics, drew notable crowds, raised attendance, or were responsible for the success or standing of the events or establishments. The submitted evidence does not distinguish the Petitioner's shows from others in his field, and is not reflective of a "career of acclaimed work in the field. H.R. Rep. No. 101-723 at 59.

In addition, the Petitioner presented evidence reflecting his earnings from [redacted] and [redacted] He did not, however, offer evidence comparing his salaries to other dancers and performers on cruise ships and resorts, so as to show that he commands a high salary at the top of his field. The Petitioner also submitted letters indicating his private dance lesson fees range from $27 to $35 per session. According [redacted] provided by the Petitioner, the national average hourly rate is between $10 and $37 per hour. As such, the Petitioner commands a salary that is within the national average and does not distinguish him from being "one of that small percentage who [has] risen to the very top of the field of endeavor." *See* 8 C.F.R. § 204.5(h)(2).

In summary, the Petitioner's evidence is not sufficient to establish that he has garnered sustained national or international acclaim, or that he is one of the small percentage at the very top of his field of endeavor. We find that the record as a whole does not reflect extensive documentation showing that the Petitioner's achievements have been recognized in the field. *See* section 203(b)(1)(A)(i) of the Act.

C. O-1 Nonimmigrant Status

The record reflects that the Petitioner received O-1 status, a classification reserved for nonimmigrants of extraordinary ability. Although USCIS has approved at least one O-1 nonimmigrant visa petition filed on behalf of the Petitioner, the prior approval does not preclude USCIS from denying an immigrant visa petition which is adjudicated based on a different standard – statute, regulations, and case law. Many Form I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Brothers Co. Ltd.*, 724 F. Supp. at 1103. Furthermore, our authority over the USCIS service centers, the office adjudicating the nonimmigrant visa petition, is comparable to the relationship between a court of appeals and a district court. Even if a service center director has approved a nonimmigrant petition on behalf of an individual, we are not bound to follow that finding in the adjudication of another immigration petition. *Louisiana Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

III. CONCLUSION

For the foregoing reasons, the Petitioner has not shown that he is eligible for classification as an individual of extraordinary ability.

ORDER: The appeal is dismissed.

Cite as *Matter of A-C-*, ID# 284833 (AAO Mar. 16, 2017)