U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF B-G-B-

DATE: MAR. 31, 2017

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a singer, songwriter, and music producer, 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 satisfied only two of the initial evidentiary criteria, of which she must meet at least three.

On appeal, the Petitioner submits documentation and a brief stating that she meets at least three criteria.

Upon *de novo* review, we will sustain 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 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 it fulfills the required number of criteria, is 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 singer, songwriter, and producer who has performed in the United States and Australia and has written and produced music for herself and other artists. Because the Petitioner has not established that she has received a major, internationally recognized award, she 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 published material criterion under 8 C.F.R. § 204.5(h)(3)(iii). The record contains numerous articles about her, including postings on [redacted] and [redacted] that support this finding. In addition, the Director determined that the Petitioner met the display criterion at 8 C.F.R. § 204.5(h)(3)(vii) based on her performances and concerts in Australia and the United States. Moreover, the Petitioner presented

evidence satisfying the original contributions criterion under 8 C.F.R. § 204.5(h)(3)(v). Specifically, she co-produced [redacted] album, [redacted] which received the [redacted] for "[redacted]"

B. Final Merits Determination

As the record satisfies three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), we now analyze the Petitioner's accomplishments and weigh the totality of the evidence to determine if her successes are sufficient to demonstrate that she has extraordinary ability in the field of endeavor. We will evaluate whether the Petitioner has demonstrated, by a preponderance of the evidence, that she has sustained national or international acclaim and that her achievements have been recognized in the field through extensive documentation, making her one of the small percentage who has risen to the very top of 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, the Petitioner has shown her eligibility.

In addition to [redacted] and [redacted] dozens of publications have interviewed and profiled the Petitioner, garnering her and her music national and international recognition. For instance, the Petitioner's album, [redacted] was critiqued on [redacted] and given three out of four stars. The reviewer indicated that the album was [redacted] and lauded the breadth of her musical skill in writing 11 of the 12 songs and playing nearly all of the musical instruments.

Moreover, the acclaim of the Petitioner's work is evidenced by its appearance in nationally and internationally popular productions. Her songs have been featured in television shows such as [redacted] and [redacted] as well as a television commercial for [redacted] In addition, the Petitioner performed in a duet with rock legend [redacted] on his song, '[redacted] for the movie, [redacted] According to [redacted] who worked on the movie soundtrack, after he forwarded the Petitioner's demo to [redacted] to get his permission to use the song, [redacted] was so impressed that he requested to join the Petitioner in a duet.

The record also contains evidence showing the Petitioner's talents are sought for nationally and internationally renowned events and endeavors. For example, she has performed with the [redacted] and has also collaborated and toured with acclaimed artists, such as [redacted] and [redacted] In reference letters, these artists detail their collaborations and highly praise the Petitioner for her multi-faceted music skills. As indicated above, the Petitioner co-produced [redacted] album, [redacted] which won an [redacted] for [redacted]' and she is credited with writing two songs on the album.

Here, the Petitioner has demonstrated her extraordinary ability. The totality of the evidence establishes that she possesses a level of expertise that is consistent with a finding that she is one of a small percentage who has risen to the very top of the field of endeavor. In addition, the Petitioner

has documented sustained acclaim. *See* section 203(b)(1)(A) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *Kazarian*, 596 F.3d at 1119-20.

III. CONCLUSION

The Petitioner has shown that she meets at least three of the evidentiary criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x). She has also demonstrated sustained national and international acclaim and that her achievements have been recognized through extensive documentation. She therefore qualifies for classification as an individual of extraordinary ability.

ORDER: The appeal is sustained.

Cite as *Matter of B-G-B-*, ID# 327939 (AAO Mar. 31, 2017)