U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF J-G-S-

DATE: MAY 3, 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a fashion stylist, seeks classification as an alien of extraordinary ability. *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 petition, concluding that the record did not establish, as required, that the Petitioner has received a major, internationally recognized award or met the requirements of at least three of the ten evidentiary criteria.

On appeal, the Petitioner submits additional evidence[1] and asserts that he meets four evidentiary criteria in addition to the one acknowledged in the Director's decision.

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.

[1] We received additional evidence related to this appeal on April 4, 2019, after adjudication but prior to the issuance of this decision. We have reviewed this evidence and determined that it does not affect the Petitioner's eligibility or alter our decision.

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).

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).

In addition, the regulation at 8 C.F.R. § 103.5(b)(3) states the following regarding the translation of foreign-language documents:

> (3) *Translations.* Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

II. ANALYSIS

The Director found that the Petitioner met one of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), relating to his service as a judge of the work of others in his field. On appeal, the Petitioner asserts that he also meets four additional evidentiary criteria. After reviewing all of the evidence in the record, we find that the Petitioner has not established that he qualifies as an alien of extraordinary ability.

> *Published material about the individual 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)

To qualify under this criterion, the material must be about the Petitioner and his work as a fashion stylist, and be published in a professional or major trade publication or other major media. In his

decision, the Director acknowledged the material about the Petitioner and his work which appeared in the 1997 edition of *Elle Quebec*, but found that it was not accompanied by a properly certified translation from French to English per 8 C.F.R. § 103.5(b)(3). On appeal, the Petitioner submits an unsigned letter from a translator, which does not comply with the regulation's requirement of a certification. In addition, we note that the Petitioner has not submitted evidence to establish that *Elle Quebec* qualifies as a professional or major trade publication or other major media, despite the Director's request. Accordingly, we find that he has not established that he meets this criterion.

> *Evidence of the individual's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specialization for which classification is sought.* 8 C.F.R. § 204.5(h)(3)(iv)

The Petitioner submitted a letter from , who states that he is a former creative director of the University. writes that the Petitioner served as a mentor and judge for students participating in the program and annual fashion show from 2012 to 2015. In his decision, the Director found this evidence to be sufficient to meet this criterion.

Upon review, however, we note that it is not apparent from 's letter whether the Petitioner was invited to serve as a judge or jury panel member to award prizes for the events in those years, or whether his participation in the program was strictly as a mentor involved evaluating the students' work. As the plain language of this criterion requires evidence of the Petitioner's "participation… as a judge," evidence of working as a mentor who evaluates students as a part of that role does not meet this requirement. In addition, the record does not include documentary evidence to corroborate 's letter regarding the Petitioner's role.[2] Depending on the specificity, detail, and credibility of a letter, USCIS may give the document more or less persuasive weight in a proceeding. The Board of Immigration Appeals (the Board) has held that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The Board also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998). Here, the record lacks specificity and detail of the Petitioner's role with the program. Accordingly, we find that this evidence does not sufficiently establish the Petitioner's qualification under this criterion.

> *Evidence of the individual'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)

In order to satisfy the regulation at 8 C.F.R. § 204.5(h)(3)(v), a petitioner must establish that not only has he made original contributions, but that they have been of major significance in the field. For example, a Petitioner may show that the contributions have been widely implemented throughout the

[2] We have reviewed the 2014 and 2015 programs for the event, available at https://design. and note that the Petitioner is not listed as a jury member or mentioned in any other capacity. To the extent that this information is inconsistent with s letter, this inconsistency should be resolved in any future filing in this matter.

field, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance.

The Petitioner points to reference letters in the record and asserts that they support his original contributions to the fashion publication field "which have taken hold in most of the industry." The letters include a different letter from , who currently serves as CEO of credits the Petitioner for launching in 2009, and states that he "invented a new advertising dimension and contributed to new media platforms" and "recognized and perfected the process of content creation and dissemination through essentially free, previously underused, consumer driven media platforms." However, the record does not include documentary evidence providing information about , the Petitioner's involvement with it, or any impact the Petitioner's role and actions may have had on other fashion publications. Mr. does state that the Petitioner's insight or model has influenced his work in media creation and has introduced him to "a myriad of talent," but this does not support his assertion that it has made a contribution to the fashion publication industry as a whole.

Another reference letter highlighted by the Petitioner on appeal was written by , Editor-in-Chief of . states that the Petitioner served as the magazine's U.S. fashion editor beginning in 2007, and through this role "established a signature to the brand that still remains." While this evidence indicates that he served a role with this magazine, it does not establish that the Petitioner's work rose to the level of an original artistic or business-related contribution of major significance to the overall field. Therefore, after review of these letters and others in the record, we find that they do not establish that the Petitioner meets this criterion.[3]

> *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)

Several tear sheets were submitted which the Petitioner asserts are evidence of the display of his work in artistic exhibitions or showcases. The Director found that since the Petitioner "has not created tangible pieces of art" as a visual artist, this evidence does not show that he could qualify under this criterion. Whether or not the work of a fashion stylist can be considered to be that of a visual artist, we do not agree that the plain language of the regulation limits qualification under this criterion to only visual artists. However, the Petitioner has not established that this evidence represents a display of his work at artistic exhibitions or showcases. First, not all of the tear-sheets or copies submitted include the Petitioner's name and identify him as having a role in their creation. Absent evidence that the Petitioner was credited for work, we cannot assume that these tear-sheets show his work. In addition, several of the tear-sheets do not include the name of the publication or other medium or venue in which the photos appeared. In those cases, the evidence is not sufficient to demonstrate that the context in which the work was displayed qualifies as an artistic exhibition or showcase.

The tear-sheets which do identify the publication in which they appeared and credit the Petitioner with either "realisation" or as a fashion editor were published in *Be* and *Numero Tokyo*. On appeal, the Petitioner asserts that the work of fashion stylists is most often displayed in print and digital media. However, the Petitioner has not submitted evidence to establish that the magazines in which his work

[3] While we do not mention all of the submitted reference letters in this decision, we have reviewed all of them.

was displayed can be considered to be artistic exhibitions or showcases as required under this criterion, as opposed to commercial media. As such, he has not established that this evidence meets this criterion.

> *Evidence that the individual 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)

A leading role should be apparent by its position in the overall organizational hierarchy and through the role's matching duties. A critical role should be apparent from the Petitioner's impact on the organization or the establishment's activities. The Petitioner's performance in this role should establish whether the role was critical for the organization or establishment as a whole.

Although the Director did not consider the Petitioner's qualification under this criterion in his decision, the Petitioner indicated in response to the Director's RFE that he has played a leading role in the career of several artists. Again on appeal, the Petitioner refers to letters from three performers, who indicate that he has advised them on wardrobe selections for concerts, videos and public appearances. However, this criterion focuses on roles played for "organizations or establishments," not individuals. With regard to these letters, the Petitioner has not identified organizations or establishments for which he has served a leading or critical role.

A fourth letter written by [redacted] Inc. indicates that as artistic director for the company, the Petitioner has played the critical role of editing the archives of his work, curating exhibits, and assisting in the curating of a book. [redacted] writes that "In large measure I attribute responsibility for the trajectory of my professional reputation and unique brand to [the Petitioner's] creative decisions," and asserts that his company "has achieved international acclaim, widespread professional recognition and commercial success." However, the record does not include evidence to support [redacted]'s assertions regarding the status and renown of his company, or which would corroborate his claims about any success the company has enjoyed that is attributable to the Petitioner. Accordingly, the evidence is insufficient to establish that the Petitioner meets this criterion.

III. CONCLUSION

The evidence does not establish that the Petitioner received a major, internationally recognized award or meets three of the ten evidentiary criteria. As a result, we need not provide the type of final merits analysis 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.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; Matter of Skirball Cultural Ctr., 25 I&N Dec. 799, 806 (AAO 2012). Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of J-G-S-*, ID# 3009236 (AAO May 3, 2019)