U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF E-M-

DATE: MAY 11, 2017

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, an actor, 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 one of the initial evidentiary criteria, of which he must meet at least three.

On appeal, the Petitioner submits additional evidence and argues that he meets at least three criteria and qualifies as an actor of extraordinary ability.

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 categories of evidence 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); *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 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

As the Petitioner has not established that he has received a major, internationally recognized award, he must satisfy at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). In denying the petition, the Director found that the Petitioner met the published material criterion at 8 C.F.R. § 204.5(h)(3)(iii). On appeal, the Petitioner maintains that he also satisfies the criteria relating to prizes or awards at 8 C.F.R. § 204.5(h)(3)(i), membership at 8 C.F.R. § 204.5(h)(3)(ii), artistic display at 8 C.F.R. § 204.5(h)(3)(vii), leading or critical role at 8 C.F.R. § 204.5(h)(3)(viii), and commercial success at 8 C.F.R. § 204.5(h)(3)(x). He further argues that he has demonstrated his sustained national or international acclaim, and that he is among the small percentage at the very top of the field of endeavor.

Upon a review of all the evidence in the record, we find that the Petitioner meets at least three of the criteria. In the final merits determination, however, the record as a whole does not establish his sustained national or international acclaim, or demonstrate that he is one of the very top actors in the field.

A. Evidentiary Criteria

The Director concluded that the Petitioner did not establish his receipt of a major, internationally recognized award. On appeal, he does not contest this finding or offer additional arguments on this issue. Instead, he argues that he satisfies at least three of the criteria under 8 C.F.R. § 204.5(h)(3)(i)-(x). The record supports his position.

> *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 Petitioner has submitted sufficient evidence to satisfy this criterion. Specifically, he received the in 2009 at the a -based cultural festival. Norwegian newspapers, such as and reported on his receipt of this award. The record confirms that these are the and most popular publications in Norway. In light of his receipt of the accolade, as well as the major media attention on his accomplishment, the Petitioner has met 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 Director determined that the Petitioner met this criterion. The record supports this finding as it contains several articles that are about the Petitioner and relating to his work as an actor, including an article titled, which appeared in The Petitioner has illustrated that based on the publication's national circulation and popularity, constitutes major media in Norway. As such, he has satisfied 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 has also satisfied the artistic display criterion. The letters from various entities confirm his involvement in theater productions. For example, a letter from the owner of describes the Petitioner's performance in her productions and Consequently, the Petitioner has met this criterion.

B. Final Merits Determination

As the Petitioner has submitted the requisite initial evidence, we will conduct a final merits determination. Specifically, we will evaluate whether he 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 have 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 or her successes are sufficient to demonstrate extraordinary ability in the field. *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 case, we conclude that the Petitioner has not shown his eligibility.

While the evidence satisfies the prizes or awards criterion at 8 C.F.R. § 204.5(h)(3)(i), the Petitioner's sole qualifying award, received in 2009 at the is insufficient to demonstrate his eligibility for the classification. An article explains that ' were eligible to be considered for the 2009 award. Similarly, the Petitioner acknowledges that his award "recognize[d] the work of actors 35 years of age and under." It thus appears that the established and experienced actors were excluded from consideration for the award. In addition, the record does not indicate that the Petitioner has received other qualifying awards since 2009. Although he claims to have won a 2009 he has not offered a copy of the award or documents from the issuing organization verifying this accomplishment. His curriculum vitae lists his 2009 but not the He also maintains that he has been nominated for other awards, but has not shown that these nominations demonstrate his eligibility for the classification. Consequently, his one qualifying award in 2009, which was aimed to recognize young actors, is not sufficient to show his sustained acclaim or that he has risen to the top of the field.

The Petitioner indicates that he is a member of the and an alumnus of the but he not shown that these organizations "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 is a Norwegian trade union that represents professional actors, and has approximately 1,050 members. is a scholarship program for theater artists. The record lacks evidence, such as bylaws or other official documentation, confirming that accepts members. Instead, the Petitioner was selected to participate in the fellowship program in 2009, which offered workshops and training to young artists. The evidence is insufficient to show that his involvement with these organizations – one accepts professional actors as members, and the other trains young performers – demonstrates his eligibility for the classification.

The record includes published materials that are about the Petitioner and his work as an actor. While he has submitted some articles that appeared in major publications in Norway, he has not demonstrated that the level of media attention he received is indicative of his status as one of the very top actors in the country. In addition, he has not presented major media coverage during the two years before he filed the petition, which is relevant in showing his sustained national or international acclaim.

Similarly, while the Petitioner has met the display criterion at 8 C.F.R. § 204.5(h)(3)(vii), the evidence is insufficient to show he is eligible for the classification. Performing in festivals, exhibitions, and other events is inherent to the work of an actor. As a result, we will evaluate the

extent to which the display of the Petitioner's work is reflective of national or international acclaim. He has performed at a number of venues in Europe, including the [redacted] and [redacted] While some of these locations can accommodate large crowds and have historical significance, the Petitioner has not sufficiently shown that his participation in the performances is indicative of his status as a top actor. In general, many performers are involved in a production. The record does not adequately explain the significance of the Petitioner's role in these productions, illustrate that his performances have garnered a significant level of media attention or attracted large crowds. Without evidence distinguishing his work from others in his field, he has not established that he "is one of that small percentage who have risen to the very top of the field of endeavor." *See* 8 C.F.R. § 204.5(h)(2).

The Petitioner maintains that he has performed leading roles for several television, film, and stage productions. The record, including reference letters, confirms his acting experience. For example, [redacted] a casting director for [redacted] praises the Petitioner's acting skills and states that he played the principal role of [redacted] in the European tour of the musical [redacted] of [redacted] verifies that he was the narrator [redacted] for the Norwegian tour of the stage show [redacted] the producer of the television show [redacted] provides that he performed a critical part in the series' [redacted] season. Other evidence, including news articles, illustrates that he has acted in a number of productions. While the Petitioner indicates that some of these shows and their production companies have won awards, he has not received awards for his performances, or showed that his work is of such significance that it led to the successes of the productions or the companies. His many roles, including those not specifically mentioned, demonstrate his experience and skills as an actor, but they are insufficient to establish that he has achieved sustained national or international acclaim or that he is one of the very top actors.

The commercial success criterion at 8 C.F.R. § 204.5(h)(3)(x) requires a petitioner to establish eligibility through volume of sales or box office receipts. The Petitioner acknowledges on appeal that he is unable to provide these types of evidence, but maintains that the high level of viewership on platforms such as [redacted] or on channels such as [redacted] demonstrates his commercial success. These media companies offer many productions to viewers. The Petitioner has not explained how his involvement in shows that are available on these platforms and channels contributes to the overall popularity and success of these companies. As a result, the success of these entities does not illustrate his sustained national or international acclaim or status as a very top actor.

In summary, the Petitioner's evidence confirms that he has worked as an actor for a number of years. This experience, however, is not sufficient to establish that he has garnered sustained national or international acclaim, or that his achievements have been recognized in the field. The record as a whole does not demonstrate that he is one of the small percentage who have risen to the very top of the field of endeavor. *See* section 203(b)(1)(A)(i) of the Act.

III. CONCLUSION

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

ORDER: The appeal is dismissed.

Cite as *Matter of E-M-*, ID# 345676 (AAO May 11, 2017)