U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF X-H-

DATE: MAY 30, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a journalist and author, 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 although the Petitioner satisfied three of the regulatory criteria, as required, he did not show his sustained national or international acclaim and demonstrate that he is among the small percentage at the very top of the field of endeavor.

On appeal, the Petitioner submits additional documentation and a brief, arguing that he has sustained the required acclaim and has risen to the very top of his field.

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.

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 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 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).

II. ANALYSIS

The Petitioner is a journalist and author who is currently an exchange student at [redacted] in [redacted] New York. As the Petitioner has not 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 indicated under the analysis section of the evidentiary criteria that the Petitioner met published material under 8 C.F.R. § 204.5(h)(3)(iii) and judging under 8 C.F.R. § 204.5(h)(3)(iv).[1] In addition, although not specified in the decision, it appears the Director concluded that the Petitioner satisfied scholarly articles under 8 C.F.R. § 204.5(h)(3)(vi), thereby meeting three criteria.[2]

[1] The Director also determined that the Petitioner did not satisfy original contributions under 8 C.F.R. § 204.5(h)(3)(v) and leading or critical role under 8 C.F.R. § 204.5(h)(viii).

[2] The Director previously issued a notice of intent to deny in which she indicated that the Petitioner met scholarly articles. In addition, in her final merits determination, the Director stated that the Petitioner satisfied three criteria.

The record reflects that the Petitioner served as the deputy editor-in-chief for fulfilling the judging criterion. However, the record does not support the Director's determination that the Petitioner met the criteria for published material and scholarly articles. Specifically, the Petitioner did not establish that the submitted screenshots and articles about him were published in professional or major trade publications or other major media. In addition, he did not demonstrate that his written work qualifies as scholarly articles. Although we do not find that the Petitioner satisfies at least three criteria, we will evaluate the totality of the evidence, including his claims of published material and scholarly articles, in the context of the final merits determination below.

B. Final Merits Determination

As indicated above, while the Petitioner has not established the requisite initial evidence, we will evaluate whether he has demonstrated, by a preponderance of the evidence, his sustained national or international acclaim and that he is one of the small percentage at the very top of the field of endeavor, and that his achievements have been recognized in the field through extensive documentation. 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 reflects that the Petitioner began working for as a writer around 2005 and then became the deputy editor-in-chief until around 2015.[3] Currently, the Petitioner attends in New York, as an exchange student. As mentioned above, the Petitioner has served in an editorial position for a publication, has written books, articles, and essays, and has received some Internet media attention. The record, however, does not demonstrate that his achievements are reflective of a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990).

As it relates to his claims of published materials about him in professional or major trade publications or other major media, the Petitioner provided nine screenshots from websites. Three of the screenshots do not reflect published material about him. Instead, the screenshots reflect coverage about two books and a song Although the screenshots credit the Petitioner as authoring the books and song, they do not reflect published material about him relating to his work. *See, e.g.,* (D. Nev. Sept. 8, 2008) (upholding a finding that articles regarding a show are not about the actor). Moreover, the Petitioner did not include the author, as required, for the screenshot posted on Moreover, although the Petitioner offered stock shares and economic data for

[3] The Petitioner provided several reference letters, as well as an accompanying cover letter submitted with his petition, which contained conflicting years of employment with

and biographic information for , he did not demonstrate that the websites are major media.

In addition, although the Petitioner established that the remaining six screenshots reflect published material about him, he did not demonstrate that the screenshots were posted on professional or major trade publications or other major media. Specifically, the Petitioner did not offer documentation showing that the website for the and are considered to be professional or major trade publications or other major media. The Petitioner also did not include the author of the screenshot posted on culture.ifeng.com.

Further, while the Petitioner provided documentation from regarding the company and its history and submitted documentation relating to the share price for Sohu.com, Inc., he did not establish that tencent.com and sohu.com qualify as professional or major trade publications or other major media. In addition, the Petitioner did not include the author of the screenshot for sohu.com. Moreover, the Petitioner presented documentation regarding and however he did not demonstrate that their websites, and are considered to be professional or major trade publications or other major media.

For these reasons, the Petitioner did not demonstrate evidence of published material about him regarding his work in professional or major trade publications or other major media under 8 C.F.R. § 204.5(h)(3)(iii). Regardless, the Petitioner did not establish that nine Internet articles from 2012 to 2016 are consistent with the sustained national or international acclaim necessary for this highly restrictive classification. *See* section 203(b)(1)(A) of the Act. Here, the Petitioner has not shown that his media 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).

Regarding his judging service, an evaluation of the significance of his experience is appropriate to determine if such evidence is indicative of the extraordinary ability required for this highly restrictive classification. *See Kazarian,* 596 F. 3d at 1121-22. As indicated above, the Petitioner served as deputy editor-in-chief for While the Petitioner provided four reference letters confirming his editor role at they do not indicate that he garnered sustained national or international acclaim for his work or reflect a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. at 59. In addition, the Petitioner provided evidence showing that he was invited to judge the in 2011, "as one of the judging committees of this national young directors' selection."[4] The Petitioner, however, did not establish that he actually served on the committee and judged the young directors. Regardless, without evidence that sets him apart from others in his field, such as that he has served as a judge of acclaimed individuals or of prestigious national or international competitions rather than aspiring

[4] The Petitioner also claimed in his initial cover letter that he served as "Chief Advisor" to the where he was "in charge of reviewing and selecting many art and cultural exhibitions / festivals." Although he indicated that he attached a screenshot, as "Exhibit L," the record does not contain such a screenshot.

students or amateurs or at local festivals, he did not demonstrate that he "is one of that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2).

Regarding the authorship of scholarly articles, the Petitioner's initial cover letter indicated his "[a]uthorship of articles in professional journals, trade publications or major media." However, in order to satisfy the regulation at 8 C.F.R. § 204.5(h)(3)(vi), the Petitioner must demonstrate his authorship of "scholarly" articles. A scholarly article should be written for "learned" persons in the field. "Learned" is defined as having or demonstrating profound knowledge or scholarship.[5] Here, the record does not show that the Petitioner's written work is scholarly in nature. Specifically, he provided translations for the table of contents for the publications showing that he authored articles. However, without the translations of the actual articles, and information about the intended audience of the work, the Petitioner did not establish that he authored "scholarly" articles. Furthermore, the Petitioner provided screenshots reflecting the sale of his work on websites. The screenshots, however, do not reflect the scholarly nature of his work; instead, they describe his opinions, commentary, and essays, such as "[t]his book is the latest collected essays . . . displaying his observation and thinking" and "[the Petitioner'] newest essays, with poems, sa[r]castic comments, and others." Accordingly, the Petitioner did not demonstrate that he authored scholarly articles in professional or major trade publications or other major media under 8 C.F.R. § 204.5(h)(3)(vi).

Notwithstanding the above, the Petitioner has not demonstrated that his publication record is consistent with being among the small percentage at the top of the field or having a "career of acclaimed work." H.R. Rep. No. at 59. In addition, the commentary for the proposed regulations implementing section 203(b)(1)(A)(i) of the Act provides that the "intent of Congress that a very high standard be set for aliens of extraordinary ability is reflected in this regulation by requiring the petitioner to present more extensive documentation than that required" for lesser classifications. 56 Fed. Reg. 30703, 30704 (July 5, 1991). Here, the Petitioner has not shown that his authorship of eight published articles and books is reflective of placing him among the small percentage at the top of his field. *See* 8 C.F.R. § 204.5(h)(2).

Moreover, the citation history or other evidence of the influence of the Petitioner's written work can be an indicator to determine the impact and recognition that his work has had on the field and whether such influence has been sustained. For example, numerous independent citations for an article authored by the Petitioner may provide solid evidence that his work has been recognized and that others have been influenced by his work. Such an analysis at the final merits determination stage is appropriate pursuant to *Kazarian,* 596 F. 3d at 1122. Here, the Petitioner offered evidence from the [redacted] *Database* reflecting that his written work has been cited approximately 159 times. The Petitioner, however, did not establish that such rate of citation demonstrates a level of interest in his field commensurate with sustained national or international acclaim. *See* section 203(b)(1)(A) of the Act. In fact, the Petitioner provided a translated list for the

[5] *See* USCIS Policy Memorandum PM-602-0005.1, *Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator's Field Manual (AFM) Chapter 22.2, AFM Update AD11-14* 9 (Dec. 22, 2010), https://www.uscis.gov/sites/default/files/ocomm/ilink/0-0-0-6423.html.

first 20 citations, which shows that 19 students cited to his written work for their higher education thesis. Although the evidence indicates that students reference his work, he has not established that he is recognized in the field by other established journalists and writers as one of that small percentage who has risen to the very top. *See* 8 C.F.R. § 204.5(h)(2).

While citations are not the only way to gauge the importance or recognition of an individual's work, the record does not otherwise demonstrate that the Petitioner's work has been considered significant and garnered acclaim in the greater field. Although the Petitioner presented evidence showing that he received the award at the in 2010 for his project, he did not show that his project demonstrates a contribution of major significance to the field as a whole rather than recognized by the local festival. Furthermore, as discussed above, the record contains four recommendation letters that praise the Petitioner for his work at but do not show that he performed in a leading or critical role or rise to a level among that small percentage at the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2).

The record as a whole, including the evidence discussed above, does not establish the Petitioner's eligibility for the benefit sought. The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields. 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). While the Petitioner need not establish that there is no one more accomplished to qualify for the classification sought, we find the record insufficient to demonstrate that he has sustained national or international acclaim and is among the small percentage at the top of his field. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2).

III. CONCLUSION

For the reasons discussed above, the Petitioner has not established his eligibility as an individual of extraordinary ability.

ORDER: The appeal is dismissed.

Cite as *Matter of X-H-*, ID# 1319527 (AAO May 30, 2018)