U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF D-O-G-

DATE: NOV. 6, 2017

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, a musician and music teacher, 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 the Petitioner had satisfied only one of the ten initial evidentiary criteria, of which he must meet at least three. The Petitioner appealed the matter to us, and we dismissed the appeal.[1]

The matter is now before us on a joint motion to reopen and reconsider. With the motion, the Petitioner submits a brief and additional evidence, asserting that he meets at least three criteria. Upon review, we will deny the motion.

I. LAW

A motion to reopen is based on documentary evidence of new facts, and a motion to reconsider is based on an incorrect application of law or policy. The requirements of a motion to reopen are located at 8 C.F.R. § 103.5(a)(2), and the requirements of a motion to reconsider are located at 8 C.F.R. § 103.5(a)(3).

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,

[1] *See Matter of D-O-G-*, ID# 307205 (AAO May 3, 2017).

(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). Alternatively, he or she must provide documentation that meets at least three of the ten 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 commercial successes).

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

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 ten criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). In dismissing the appeal, we found that the Petitioner met the judging criterion at 8 C.F.R. § 204.5(h)(3)(iv) and the display criterion at 8 C.F.R. § 204.5(h)(3)(vii). On motion, the Petitioner maintains that he also meets the awards criterion at 8 C.F.R. § 204.5(h)(3)(i), the published material criterion at 8 C.F.R. § 204.5(h)(3)(iii), the leading or critical role criterion at 8 C.F.R. § 204.5(h)(3)(viii), and the commercial successes criterion at 8 C.F.R. § 204.5(h)(3)(x). Upon review of all of the evidence, we conclude that it does not support a finding that the Petitioner meets the plain language requirements of at least three criteria, nor has he established the level of expertise required for the classification sought.

A. Motion to Reconsider

For purposes of a motion to reconsider, the question is whether our decision was correct based on the record that existed at the time of adjudication. With respect to the awards criterion at 8 C.F.R. § 204.5(h)(3)(i), in addition to providing new evidence, which will be discussed as part of his motion to reopen, the Petitioner argues that he meets this criterion based on his school orchestra's receipt of prize at the in Netherlands, in 1981. While he previously offered jury reports from this competition, which showed the scores for the performance of the these reports did not name the Petitioner as a recipient. The record at the time of our appellate decision was insufficient to show that the Petitioner played in or was affiliated with the

The Petitioner contends that the plain language of the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i) does not exclude awards received "as a member of a certain group of individuals." While an individual integral to his group's winning of an award may be considered as a recipient, the Petitioner must also demonstrate that the aforementioned third prize is a nationally or internationally recognized award for excellence in the field. He asserts that the in Netherlands, takes pride in being the worldwide biggest contest of its kind for more than fifty years, uniting musicians from all over the world in peaceful, inspiring and exciting competition." Without additional evidence, however, the Petitioner has not shown that the prize identified was a nationally or internationally recognized for excellence in the field. He has not established therefore that he met this criterion.

Regarding the published material criterion at 8 C.F.R. § 204.5(h)(3)(iii), our decision noted that the Petitioner did not provide the originals or photocopied versions of the German-language publications. In addition to providing new evidence, the Petitioner responds that he has limited access to copies of his press releases because these materials are stored in an overseas container at "a distance of more than 200 miles north" of his current residence. He notes that while electronic copies are available on his personal computer, they include only "the initials of the respective author, and they do not display the date of their release." The plain language of this criterion, however, requires "the title, date, and author of the material." Furthermore, the Petitioner did not demonstrate that the sources of the articles are professional or major trade publications, or other major media. Consequently, he has not shown in his motion to reconsider that he met the plain language requirements of this criterion based on the record before us on appeal.

With respect to the leading or critical role criterion at 8 C.F.R. § 204.5(h)(3)(viii), the Petitioner claims that he satisfies this criterion through his services as concertmaster for the from 1989 to 1996. As evidence of this service, the Petitioner previously provided a 1994 letter from Lecturer in at the The letter from indicated that he knew the Petitioner as the head of Our decision stated, however, that the record did not establish that is an organization or establishment with a distinguished reputation. In response, the Petitioner asserts that "enjoys a distinguished

reputation in the field that reaches far beyond regional borders" due to its location in "a historic city and an academic cluster of excellence." He further contends that international audience and international students distinguish and spread its reputation "all over the world wherever and whenever its guests return home from Germany." The Petitioner's statements about however, are insufficient to demonstrate that has earned a distinguished reputation. Accordingly, the Petitioner has not established that he meets the plain language requirements of this criterion.

In regard to the commercial successes criterion at 8 C.F.R. § 204.5(h)(3)(x), the Petitioner repeats his earlier claim that his employment and wages from 1986 to 2011 demonstrate his "sustained commercial success." Our decision noted that the Petitioner did not offer box office receipts or sales materials, nor had he established eligibility through comparable evidence, in accordance with 8 C.F.R. § 204.5(h)(4). In response, the Petitioner states that he "does not want to disclose the corresponding documents" and that such "a disclosure is not imperative."

The arguments the Petitioner offers on motion do not establish that our appellate findings were based on an incorrect application of the law, regulation, or USCIS policy, nor does the motion demonstrate that our latest decision was erroneous based on the evidence before us at the time of the decision. Therefore, the Petitioner has not met the requirements of a motion to reconsider.

B. Motion to Reopen

In support of his motion to reopen, the Petitioner offers further evidence for the criteria at 8 C.F.R. § 204.5(h)(3)(i) and (iii), which we will address below.

> *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 provides a May 2017 letter from assistant principal of the in Germany. states: "As a member of the Violin Section of the [the Petitioner] was awarded with a Prize at the 1981 in Netherlands. The monetary award conferred to . . . was the equivalent of 2,500 USD." This evidence is sufficient to demonstrate his receipt of the award. However, without additional evidence regarding the prize, such as the pool of individuals competing or the level of attention it attracted within the field, the Petitioner has not established that his award was nationally or internationally recognized for excellence in the field. As a result, the Petitioner has not shown that he meets 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 Petitioner submits six articles pertaining to music performances given in Germany. The majority of the articles discuss church concerts conducted by the Petitioner. The articles, entitled "[redacted] and "[redacted] are about the performances themselves and only mention the Petitioner in passing. The plain language of this regulatory criterion, however, requires "published material about the alien." Articles that are not about the Petitioner do not meet this regulatory criterion. *See, e.g., Negro-Plumpe v. Okin*, 2:07-CV-00820 at *1, *7 (D. Nev. Sept. 2008) (upholding a finding that articles about a show are not about the actor). Furthermore, he has not demonstrated that the sources of the articles are professional or major trade publications, or other major media. Lastly, while the Petitioner included the title of the articles, he has not identified the date and author for each piece. Accordingly, he has not submitted evidence that meets the plain language requirements of this criterion.

The new evidence submitted on motion does not establish that the Petitioner has received a major, internationally recognized award, or that he meets at least three of the ten categories of evidence listed at 8 C.F.R. § 204.5(h)(3). Furthermore, although we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20, we find the record insufficient to establish that he has sustained national or international acclaim, or that he is one of the small percentage at the very top of his field of endeavor.

III. CONCLUSION

The Petitioner's motion does not demonstrate that our previous decision was based on an incorrect application of law or policy, and it does not establish that he qualifies as an individual of extraordinary ability.

ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of D-O-G-*, ID# 678539 (AAO Nov. 6, 2017)