U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF R-B-J-

DATE: OCT. 17, 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, an actor, seeks classification as an individual 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 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 presents previously submitted documentation and a brief, arguing that he fulfills at least three of the ten criteria.

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). The regulation at 8 C.F.R. § 204.5(h)(4) allows a petitioner to submit comparable material if he or she is able to demonstrate that the standards at 8 C.F.R. § 204.5(h)(3)(i)-(x) do not readily apply to the individual's occupation.

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 has performed in theatrical and musical productions in the Dominican Republic and the United States. Because he has not indicated or 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).

In denying the petition, the Director determined that the Petitioner met one of the initial evidentiary criteria, awards under 8 C.F.R. § 204.5(h)(3)(i). However, for the reasons discussed later, the record does not reflect that the Petitioner demonstrated his eligibility for the awards criterion.

On appeal, the Petitioner maintains that he fulfills three additional criteria, discussed below. We have reviewed all of the evidence in the record and conclude that it does not support a finding that the Petitioner satisfies the requirements of at least three criteria.

A. Evidentiary Criteria

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 Director found that the Petitioner satisfied this criterion without identifying the qualifying award(s) and explaining his determination. In order to fulfill this criterion, the Petitioner must demonstrate that he received the prizes or awards, and they are nationally or internationally recognized for excellence in the field of endeavor.[1] Relevant considerations regarding whether the basis for granting the prizes or awards was excellence in the field include, but are not limited to, the criteria used to grant the prizes or awards, the national or international significance of the prizes or awards in the field, and the number of awardees or prize recipients as well as any limitations on competitors.[2] Because the record does not reflect that the Petitioner established eligibility under the regulation at 8 C.F.R. § 204.5(h)(3)(i), we will withdraw the findings of the Director for this criterion.

The record reflects that the Petitioner received the Association of Latin Entertainment Critics of New York (ACE) Award and the Hispanic Organization of Latin Actors (HOLA) Award. As it relates to the ACE Award, the Petitioner submitted screenshots from premiosace.org and metrord.do similarly stating that ACE is a press organization founded on December 12, 1967, by a large group of New York-based Hispanic journalists and correspondents, and its annual award ceremony is broadcasted in the United States "with extensive press, radio and television coverage." However, besides these two websites, the Petitioner provided and referenced only two other websites, upi.com and newyork.methodactingstrasberg.com, which covered the ACE Awards.[3] Moreover, the Petitioner did not identify any radio or television stations that broadcasted or reported on the Ace Awards. Here, the Petitioner did not demonstrate that the ACE Awards received the claimed "extensive press, radio and television coverage," signifying the national or international significance of the awards in the field. In addition, the Petitioner did not show that the ACE Awards are recognized on a national or international scale rather than locally limited to the New York area.

Likewise, regarding the HOLA Awards, the Petitioner submitted documentation regarding the purpose and history of the organization. Specifically, HOLA "is New York's only organization devoted to the support and promotion of Latino performers into the mainstream of American culture while maintaining [its] unique cultural identity as Hispanics" and is "the nation's longest running active arts advocacy organization for Latino actors." In addition, the Petitioner provided screenshots from two websites, playbill.com and broadwayworld.com, announcing the upcoming awards ceremony. While the majority of the Petitioner's evidence relates to HOLA overall, the limited coverage of the awards ceremony on two websites is not reflective of a nationally or internationally recognized award for excellence. Here, the Petitioner did not demonstrate that the HOLA Awards garner attention at a level

[1] *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* 6 (Dec. 22, 2010), https://www.uscis.gov/policymanual/HTML/PolicyManual.html.

[2] *Id.*

[3] The record also contains a screenshot from *Wikipedia* briefly summarizing the history of the ACE Awards without showing the national or international recognition of excellence in the field.

of national or international significance. Moreover, the Petitioner did establish the recognition of the award for excellence in the field beyond HOLA and the New York surrounding area.

For the reasons discussed above, the Petitioner did not demonstrate that he received nationally or internationally recognized prizes or awards for excellence in his field of endeavor. Accordingly, we withdraw the findings of the Director for 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 claims that he "was profiled extensively in the leading newspapers of the Dominican Republic." In order to fulfill this criterion, the Petitioner must demonstrate published material about him in professional or major trade publications or other major media, as well as the title, date, and author of the material.[4]

Although the Petitioner claims that he was featured in articles published in *El Nuevo Diario*, *Hoy*, *Listin Diario*, *Diario Libre*, and *Metro RD,* the record does not support his assertions. Instead, the record reflects that the Petitioner provided screenshots of seven articles posted on five websites, such as elnuevodiario.com, diariolibre.com, hoy.com, listindiario.com, and metrord.do. In the case here, the Petitioner must demonstrate that the websites are major media. Again, the Petitioner did not establish that any of the claimed newspapers published articles about him.

In addition, the Petitioner submitted screenshots from bbc.com regarding the media profile of the Dominican Republic. However, none of the above websites are listed as major media sources in the country. Likewise, the Petitioner provided screenshots from allyoucanread.com relating to the top 30 Dominican Republic newspapers and news media. Again, the above media websites are not included in the list. Moreover, the Petitioner presented screenshots from hoy.com pertaining to the newspaper, *Hoy*. The screenshots make no mention of hoy.com and do not otherwise reflect that the website is a major medium in his native country. Accordingly, the Petitioner did not demonstrate that any of the websites qualify as professional or major trade publications or other major media.[5]

Notwithstanding the above, as it relates to elnuevodiario.com, hoy.com, and listindiario.com, the screenshots are about the musical, [redacted] While the Petitioner is mentioned as performing in a role, the articles are not about the Petitioner. Articles that are not about a petitioner do not fulfill this regulatory criterion. *See, e.g., Negro-Plumpe v. Okin,* 2:07-CV-820-ECR-RJJ at *1, *7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles regarding a show are not about the actor). Further, the Petitioner did not include the required authors of the articles.

Moreover, the Petitioner provided a 2018 article posted on diariolibre.com that occurred after the filing of his initial petition. However, the Petitioner must establish that all eligibility requirements for the

[4] *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 7.

[5] *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 7 (providing that evidence of published material in professional or major trade publications or in other major media publications about the petitioner should establish that the circulation (on-line or in print) is high compared to other circulation statistics and show the intended audience).

immigration benefit have been satisfied from the time of filing and continuing through adjudication. *See* 8 C.F.R. §103.2(b)(1). Further, the Petitioner submitted a 2017 article posted on diariolibre.com reflecting a review of [redacted] rather than published material about him. In addition, the Petitioner did not include the required author of the article.

Finally, the Petitioner submitted two articles posted on metrord.do reflecting published material about him relating to his work. However, as discussed above, the Petitioner did not demonstrate that metrord.do is a professional or major trade publication or other major medium. Moreover, the Petitioner did not include the author for the 2017 article.

Because the Petitioner did not establish that his evidence meets the regulatory requirements, he did not demonstrate that he satisfies 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 record reflects that the Petitioner performed as an actor in theatrical settings. Therefore, the Petitioner established that he fulfills this criterion.

> *Evidence that the alien 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).

The Petitioner argues that he meets this criterion based on his "critical role to [redacted] for his role as the lead actor for the organization's most successful recent original production entitled [redacted]." In addition, the Petitioner contends that he "played a central role" to the [redacted] based on his performance for [redacted] As it relates to a leading role, the evidence must establish that a petitioner is or was a leader. A title, with appropriate matching duties, can help to establish if a role is or was, in fact, leading.[6] Regarding a critical role, the evidence must demonstrate that a petitioner has contributed in a way that is of significant importance to the outcome of the organizations or establishment's activities. It is not the title of a petitioner's role, but rather the performance in the role that determines whether the role is or was critical.[7]

The record reflects that he submitted a letter from [redacted], executive director of [redacted], who indicated the Petitioner's ACE Award and Hola Award and claimed that "[w]ith these awards and all of the critical acclaim . . . he proved himself to be a critical member to the success of [redacted] and in turn [redacted], which has garnered even more attention since the success of [redacted]." Moreover, he presents a letter from [redacted], founder of [redacted] who praised the Petitioner for his role in [redacted] and asserted that he "can confidently say that [the Petitioner] performed in a critical role for the musical and for the theatre as well." However, the letters do not establish that the Petitioner held a leading position, nor do they contain specific information signifying his essential role for the theatres.[8] For instance, the letters did not describe the hierarchy

[6] *See* USCIS Policy Memorandum PM-602-0005.1, *supra*, at 10.
[7] *Id.*
[8] *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 10 (stating that letters from individuals with personal

of [redacted] or [redacted] and explain where the Petitioner's position fit in the overall structure of the theatres. Moreover, while the letters acknowledged the Petitioner's awards, they did not demonstrate how his performances in the musicals contributed to the successes or standings of the theatres.[9] Further, repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). Although the letters confirm the Petitioner's performances in musicals, they do not contain detailed, probative information demonstrating the critical nature he performed for the theatres.

Accordingly, the Petitioner did not show that he satisfies this criterion.

B. O-1 Nonimmigrant Status

We note that the record reflects that the Petitioner received O-1 status, a classification reserved for nonimmigrants of extraordinary ability. Although USCIS has approved at least one O-1 nonimmigrant visa petition filed on behalf of the Petitioner, the prior approval does not preclude USCIS from denying an immigrant visa petition which is adjudicated based on a different standard – statute, regulations, and case law. Many Form I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108, *aff'd*, 905 F. 2d at 41. Furthermore, our authority over the USCIS service centers, the office adjudicating the nonimmigrant visa petition, is comparable to the relationship between a court of appeals and a district court. Even if a service center director has approved a nonimmigrant petition on behalf of an individual, we are not bound to follow that finding in the adjudication of another immigration petition. *Louisiana Philharmonic Orchestra*, No. 98-2855, 2000 WL 282785, at *2.

III. CONCLUSION

The Petitioner has not submitted the required initial evidence of either a one-time achievement or documents that meet at least three of the ten criteria. As a result, we need not provide the type of final merits 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 Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward the top. USCIS has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994). Here, the Petitioner

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knowledge of the significance of a petitioner's leading or critical role can be particularly helpful in making this determination as long as the letters contain detailed and probative information that specifically addresses how the role for the organization or establishment was leading or critical).

[9] The Petitioner also provided evidence reflecting that he was nominated for a 2019 [redacted] Award as an outstanding supporting actor for [redacted], as well as screenshots regarding reviews for the musicals. Again, the Petitioner did not establish how his nomination and reviews for the musical show his leading or critical role for the theatre.

has not shown that the significance of his work is indicative of the required sustained national or international acclaim or that it is consistent with a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate that the Petitioner has garnered national or international acclaim in the field, and he is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2).

For the reasons discussed above, the Petitioner has not demonstrated his eligibility as an individual of extraordinary ability. 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, the petitioner bears the 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 R-B-J-*, ID# 4997670 (AAO Oct. 17, 2019)