U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF E-S-N-

DATE: FEB. 28, 2019

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner 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 petition, concluding that the Petitioner had satisfied two of the initial evidentiary criteria, of which he must meet at least three.

On appeal, the Petitioner contends that he meets a third criterion that relates to original contributions of major significance in the field, 8 C.F.R. § 204.5(h)(3)(v), and qualifies for the classification.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 203(b)(1)(A) of the Act makes visas available to certain immigrants 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 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 the petitioner does not submit this evidence, then he or she must provide documentation that meets at least three of the ten criteria listed under 8 C.F.R. § 204.5(h)(3)(i)-(x) (including items such as qualifying awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the submitted material in a final merits determination and assess whether the record, as a whole, 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, 1119-20 (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, 1343 (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 record, including the Petitioner's statements, shows that he is an advertising executive and an artist specialized in pop art. The Director concluded that the Petitioner meets the published material criterion under 8 C.F.R. § 204.5(h)(3)(iii)[1] and the display criterion under 8 C.F.R. § 204.5(h)(3)(vii).[2] The record supports this conclusion. Specifically, the Petitioner has submitted articles discussing his artwork and exhibitions in publications that, based on their circulation and reach, are considered major media in his country of citizenship, Brazil. In addition, he has established that his work has been displayed at the [redacted] and a cultural center. Although he has satisfied two criteria under 8 C.F.R. § 204.5(h)(3)(iii) and (vii), he has not satisfied the initial evidence requirements of meeting at least three criteria.[3]

On appeal, the Petitioner asserts that he meets a third criterion under 8 C.F.R. § 204.5(h)(3)(v), which requires him to present "[e]vidence of [his] original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field." To satisfy this criterion, the

[1] The regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires the Petitioner to submit "[p]ublished 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," noting that "[s]uch evidence shall include the title, date, and author of the material, and any necessary translation."

[2] The regulation at 8 C.F.R. § 204.5(h)(3)(vii) requires the Petitioner to submit "[e]vidence of the display of the alien's work in the field at artistic exhibitions or showcases."

[3] The Petitioner has not alleged, and the record does not demonstrate, that he has received a major, internationally recognized award. *See* 8 C.F.R. § 204.5(h)(3). As such, he must provide documentation that meets at least three of the ten criteria listed under 8 C.F.R. § 204.5(h)(3)(i)-(x) to satisfy the initial evidence requirements.

Petitioner must establish that not only has he made original contributions but that they have been of major significance in the field. Not all contributions are qualifying. Rather, he must offer documentation confirming that his contributions rise to the level of major significance in the field.

The Petitioner maintains that he has met this criterion because he has offered "a host of publications and announcements concerning the event, [redacted] and that "[his] works were so well-received that the presentation and exhibition of the works was published in practically every medium from online to magazines, newspapers and television in Brazil." On appeal, he offers a June 2017 letter from [redacted] who had served as the curator for his exhibitions, and an analytical report from [redacted], a museological consultant firm, as evidence that his work constitutes original contributions of major significance in pop art.

In his letter, [redacted] a curator at the [redacted] indicates that he allowed the Petitioner to show his work at the museum because of "its originality." He states that the Petitioner's art "opened up a heated debate on means of communication, views of different moments in time and new ways of differentiating between the individual and the collective observation." He claims that the work "made an impact on the artistic world, and people saw in [the] work an unexpected offshoot of Pop Art and a real contribution to contemporary Brazilian art." He notes that he wrote a book about the Petitioner and his artwork.

The analytical report, like the letter from [redacted] provides details about the Petitioner's work, including his [redacted] exhibits, explaining that he has combined visual elements from different eras to create art that is thought provoking. The report indicates that the Petitioner's work has been exhibited in two "important and reputable Brazilian contemporary art museums," including the [redacted] and has garnered favorable reviews. It also provides that in 2014, [redacted] wrote a book about the Petitioner.

The record includes insufficient evidence establishing, by a preponderance of the evidence,[4] that the Petitioner's work constitutes major significance in pop art. While the decisions of museums and other artistic venues to show the Petitioner's work might confirm that they saw value in the work and believed that it should be shared with the public, such activities alone, without evidence of their major significance in the field, are not sufficient to satisfy the criterion under 8 C.F.R. § 204.5(h)(3)(v). *See Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009), *aff'd in part*, 596 F.3d 1115. For example, the [redacted] confirms in an October 2009 letter that it presented the Petitioner's work in an exhibition. The letter, however, does not indicate what impact the work might have had in the field, or that the museum chose to present the exhibition because the work or the Petitioner

[4] If a petitioner submits relevant, probative, and credible evidence that leads U.S. Citizenship and Immigration Services (USCIS) to believe that the claim is "more likely than not" or "probably true," the petitioner has satisfied the "preponderance of the evidence" standard of proof. *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* 4 (Dec. 22, 2010), http://www.uscis.gov/laws/policy-memoranda.

had significantly influenced or impacted pop art. Similarly, although published materials in the record discussed the opening of the [redacted] exhibition and offered information about the artwork, they do not specify the exhibition or the Petitioner's contributions in the field, or demonstrate that such contributions rose to the level of major significance.

The documents in the record, including reference letters and evidence we have not specifically discussed, do not confirm that the Petitioner's work has significantly impacted or influenced, or otherwise constitutes contributions of major significance in pop art. Letters that offer general praises of the Petitioner and that repeat the regulatory language, but do not sufficiently explain how his contributions have already influenced the field significantly are insufficient to satisfy this criterion. *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, 9 (noting "[l]etters that lack specifics and simply use hyperbolic language do not add value, and are not considered to be probative evidence that may form the basis for meeting this criterion"); *see also Kazarian*, 596 F.3d at 1122 (finding "letters from physics professors attesting to [a petitioner's] contributions in the field" were insufficient to meet this criterion); *Visinscaia*, 4 F. Supp. 3d at 134-35 (upholding a finding that a ballroom dancer had not met this criterion because she did not demonstrate her impact in the field as a whole).

Likewise, the record does not confirm that the publication of [redacted] book is indicative of the Petitioner's contributions of major significance in pop art. The book, which the [redacted][5] had published, details art workshops that the Petitioner led and that were designed for individuals with intellectual impairments. It documents the participants' creative process and showcases their finished artwork. The book does not discuss the Petitioner's contributions in pop art, the field in which he claims extraordinary ability, nor does it establish that his contributions rise to the level of major significance or that his selection to lead the workshops confirms that he has made contributions of major significance in pop art. Based on the evidence in the record, the Petitioner has not shown, by a preponderance of the evidence, that he has made original contributions of major significance in pop art.

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, upon a review of the record in its entirety, we conclude that it does not support a finding that he has established the acclaim and recognition required for this classification.

The Petitioner seeks a highly restrictive visa classification, intended for individuals who are 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

[5] The record shows that the [redacted] is a public interest organization in [redacted] Brazil, that helps intellectually impaired individuals.

"extraordinary ability" standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r. 1994). Here, the Petitioner has not shown that the significance of his artistic accomplishments 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; 8 C.F.R. § 204.5(h)(2).

For the foregoing reasons, the Petitioner has not shown that he qualifies for classification as an individual of extraordinary ability.

ORDER: The appeal is dismissed.

Cite as *Matter of E-S-N-*, ID# 2131108 (AAO Feb. 28, 2019)