U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34063844

Date: JAN. 8, 2025

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, a singer, seeks to classify himself 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 petition, concluding that the record does not establish the Petitioner received a one-time achievement of a major, internationally recognized award. The Director further concluded that the record does not satisfy, in the alternative, at least three of the 10 initial evidentiary criteria. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

Section 203(b)(1) of the Act makes visas available to immigrants with extraordinary ability if:

> (i) the [noncitizen] 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 [noncitizen] seeks to enter the United States to continue work in the area of extraordinary ability, and
>
> (iii) the [noncitizen]'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 their 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 they must provide sufficient qualifying documentation that meets at least three of the 10 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).

II. ANALYSIS

As noted above, the Director concluded the record does not establish the Petitioner received a one-time achievement of a major, internationally recognized award. The Director further determined that the record does not satisfy, in the alternative, at least three of the 10 criteria listed at 8 C.F.R. §§ 204.5(h)(3)(i)-(x). Specifically, the Director concluded that the record does not satisfy the criteria at 8 C.F.R. §§ 204.5(h)(3)(i), (iii), (v), and (viii). The Director indicated that the Petitioner did not submit evidence to address the criteria at 8 C.F.R. §§ 204.5(h)(3)(ii), (iv), (vi)-(vii), (ix)-(x). On appeal, the Petitioner reasserts that the record satisfies the criteria at 8 C.F.R. §§ 204.5(h)(3)(i), (iii), (v), and (viii). The Petitioner does not assert on appeal that the record satisfies the criteria at 8 C.F.R. §§ 204.5(h)(3)(ii), (iv), (vi)-(vii), (ix)-(x), thereby waiving these criteria. *See, e.g.*, *Matter of M-A-S-*, 24 I&N Dec. 762, 767 n.2 (BIA 2009) (citing *Greenlaw v. U.S.*, 554 U.S. 237 (2008) (upholding the party presentation rule)). The Petitioner does not overcome the Director's denial for the reasons discussed below.

> *Documentation of the* [*noncitizen'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 acknowledged that the record contains copies of "education documents, certificates of appreciation, certificates of recognition, certificates of participation, and commendation letters." However, the Director observed that the record does not establish how any of those documents "are recognized nationally or internationally beyond the awarding entities." Therefore, the Director concluded that the record does not satisfy the criterion at 8 C.F.R. § 204.5(h)(3)(i).

On appeal, the Petitioner references documents he has received, and he asserts, "The fact that the [Petitioner] received awards in the capital and another city shows the awards are national and not merely local." However, the Petitioner has not established that any of the documents he references on appeal are nationally or internationally recognized. For example, the record contains the Petitioner's honorary diploma from the [redacted] which, as translated in English in the record, he received "for active participation in the Celebration of 25th Anniversary of [redacted] but the Petitioner has not established the national or international significance of receiving

acknowledgment of participation in that event. As another example, the Petitioner has not established the national or international significance of a certificate of appreciation from a [redacted] city councilman, dated October 26, 2017, "for outstanding your contributions [sic] to Armenian music and the arts." The other documents the Petitioner references on appeal lack similar context.

The Petitioner's assertion on appeal that his receipt of documents from more than one locale "shows the awards are national and not merely local" is unpersuasive. If an award is not, in and of itself, nationally or internationally significant, receipt of multiple relatively insignificant awards does not make them nationally or internationally significant in the aggregate.

The Petitioner bears the burden of proving that he has received nationally or internationally recognized prizes or awards for excellence in the field of endeavor. *See Matter of Chawathe*, 25 I&N Dec. at 375-76. Because the record does not establish that the documents the Petitioner has received are nationally or internationally recognized, the record does not satisfy the criterion at 8 C.F.R. § 204.5(h)(3)(i).

> *Published material about the* [noncitizen] *in professional or major trade publications or other major media, relating to the* [noncitizen'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 acknowledged that the Petitioner submitted a list of "links to claimed performances and interviews on YouTube.com and Instagram.com but did not provide certified transcripts. Nor did the [P]etitioner provide evidence establishing that these social media platforms are professional or major trade publications or other major media." The Director also acknowledged "other claimed articles that are biographical in nature." The Director concluded that the record does not satisfy the criterion at 8 C.F.R. § 204.5(h)(3)(iii).

On appeal, the Petitioner references "[a] list of URL links from [his] interviews and concert appearances" in the record. The Petitioner also submits, for the first time on appeal, an English translation of an interview from that list of URL links, published by [redacted] on YouTube. The Petitioner also submits a printout of self-promotional information from the [redacted] television company's website. However, the self-promotional information is dated 2012, many years before the Petitioner filed the Form I-140, Immigrant Petition for Alien Workers; therefore, its probative value for determining whether the television company qualifies as major media, as required by the criterion at 8 C.F.R. § 204.5(h)(3)(iii), is minimal. Even to the extent that the self-promotional webpage dated 2012 may inform whether [redacted] presently qualifies as major media, it does not provide material information, such as current viewership data, that may establish whether the company is the type of major media contemplated by the criterion at 8 C.F.R. § 204.5(h)(3)(iii).

The Petitioner also resubmits on appeal a copy of an English translation of an interview that states it is "translated from Google," which was already in the record. The document does not clarify whether it was created using Google's translation feature. Moreover, a document "translated from Google" does not satisfy the requirements at 8 C.F.R. § 103.2(b)(3) that "[a]ny document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English." Similar documents submitted by the

Petitioner on appeal apparently created by "ChatGPT 3.5," specifically noting that "ChatGPT can make mistakes," do not satisfy the requirements at 8 C.F.R. § 103.2(b)(3).[1]

Aside from biographical information that the Director acknowledged, the record does not contain a sufficient, English language transcript of the interviews merely listed as URLs, or any other substantive documentary evidence of publications about the Petitioner. Even to the extent that the record establishes the substance of interviews the Petitioner gave, the record does not establish whether the publishing entities qualify as professional or major trade publications or other major media, as contemplated by the criterion at 8 C.F.R. § 204.5(h)(3)(iii). Therefore, the record does not satisfy the criterion at 8 C.F.R. § 204.5(h)(3)(iii).

We need not determine whether the record satisfies the criteria at 8 C.F.R. §§ 204.5(h)(3)(v) and (viii) because, even if it did, the record would not satisfy at least three of the ten criteria at 8 C.F.R. § 204.5(h)(3). Accordingly, we reserve our opinion regarding whether the record satisfies the criteria at 8 C.F.R. §§ 204.5(h)(3)(v) and (viii). *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

III. CONCLUSION

The Petitioner has not established he received a one-time achievement or, in the alternative, evidence that meets at least three of the 10 criteria at 8 C.F.R. §§ 204.5(h)(3)(i)-(x). As a result, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. *See INS v. Bagamasbad*, 429 U.S. at 25; *see also Matter of L-A-C-*, 26 I&N Dec. at 526 n.7. Nevertheless, we have reviewed the record in the aggregate, concluding that it does not support a conclusion that the Petitioner has established the acclaim and recognition required for the classification sought.

The Petitioner 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 that 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; *see also* 8 C.F.R. § 204.5(h)(2).

ORDER: The appeal is dismissed.

[1] The documents bear the phrase "ChatGPT" in numerous places, without further context. The documents also bear URLs from ChatGPT's website. However, the documents do not clarify whether ChatGPT translated documents from another language into English, who used ChatGPT to do so, and whether a qualified translator confirmed the accuracy of the translations, which is particularly significant given that the documents specifically state, "ChatGPT can make mistakes."