U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 6221341

Date: AUG. 26, 2020

Appeal of Nebraska Service Center Decision

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

The Petitioner, a jeweler, seeks classification as an alien 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 petition, concluding that although the record established that the Petitioner satisfied the initial evidentiary requirements, it did not establish, as required, that the Petitioner has sustained national or international acclaim and is an individual in the small percentage at the very top of the field. The matter is now before us on appeal.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon de novo review, we will dismiss the appeal.

I. LAW

Section 203(b)(1)(A) of the Act makes immigrant visas available to aliens 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 an initial evidentiary threshold of recognition through either a one-time achievement (that is, a major, internationally recognized award) or qualifying 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 claims to have been self-employed as a jeweler since February 2006.[1] He has been in the United States since April 2016; at the time of filing, the Petitioner was a B-2 nonimmigrant visitor, a classification that does not permit employment in the United States.

A. Evidentiary Criteria

Because the Petitioner 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). The Petitioner claims to have met six criteria, summarized below:

- (i), Lesser nationally or internationally recognized prizes or awards;
- (ii), Membership in associations that require outstanding achievements;
- (iii), Published material about the alien in professional or major media;
- (v), Original contributions of major significance;
- (vi), Authorship of scholarly articles; and
- (vii), Display at artistic exhibitions or showcases.

The Director concluded that the Petitioner met three of the evidentiary criteria, numbered (ii), (vi), and (vii). On appeal, the Petitioner asserts that he also meets the other three claimed criteria. After reviewing all of the evidence in the record, we conclude that the Petitioner has only satisfied criterion (vii), relating to display at artistic exhibitions or showcases. Below, we will explain why the Petitioner has not satisfied the other five claimed criteria.

[1] The Petitioner was 15 years old in [redacted] 2006.

> 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)

A photocopied certificate indicates that [redacted] Realism awarded the Petitioner a "Saint Michael Gold Medal . . . in the category JEWERLY [sic] ART DECO" at the [redacted] competition in 2016. A second certificate indicates that the Petitioner "has been awarded the University [redacted] Prize for Best Overall Performance for Master of jewelry Academic year 2009-2010."

The Petitioner did not establish that either of these prizes is nationally or internationally recognized. The University [redacted] prize appears to be an academic award, limited to students at the University.

The Petitioner has not satisfied this criterion.

> Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields. 8 C.F.R. § 204.5(h)(3)(ii)

The Director concluded that the Petitioner satisfies this criterion. We disagree.

A translated certificate indicates that the Beneficiary is a "Jeweler master" with [redacted] described as a craftsman's association. A letter attributed to a regional official of [redacted] states: "The [redacted] Association requires outstanding achievements of its members, as judged by nationally or internationally recognized experts in the field of Folk Art." Merely repeating the language of the statute or regulations does not satisfy a 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).

After the Director asked for corroborating evidence, the Petitioner submitted a letter attributed to the chief executive officer of [redacted] stating: "In accordance with the Charter of [redacted] [sic] Association, admission to the Association is granted based on the recommendation of Art Experts Council composed solely of nationally or internationally recognized experts." The Petitioner has not submitted a copy of the Charter or other governing documents to establish [redacted]'s membership requirements.

We cannot consider the letter itself to be corroboration of the membership requirements as the following passage from the same letter raises grave questions about its origin and authenticity:

> Regarding work ethic, [the Petitioner] completes his work quickly and with the highest quality. On more than one occasion, [the Petitioner] was given total responsibility for developing critical components to our systems and each time he delivered total quality software.

Apart from the tone of this passage, which more resembles an employer's recommendation letter than an explanation of [redacted]'s membership requirements, the references to "critical components" and "quality software" have no demonstrated relevance to the matter at hand. The letter also indicates that

the Petitioner's "efforts were recently rewarded with a promotion in his profession," although the Petitioner claims to be self-employed. Given these anomalies, we cannot afford this letter any significant weight or credibility. Unresolved material inconsistencies raise questions about the reliability and sufficiency evidence submitted in support of the requested immigration benefit. See Matter of Ho, 19 I&N Dec. 582, 591-92 (BIA 1988).

A second letter attributed to the same official describes [redacted]'s purpose and activities, but does not discuss how it selects its members. This second letter indicates that [redacted] has 15,000 members, a size that does not readily suggest highly selective membership requirements.

The Petitioner has not shown that his membership in [redacted] meets the regulatory requirements.

> 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)

A translated article from Buxoroyi Sharif contends that "[e]verybody knows [the Petitioner] even in foreign countries." The editor of the publication states: "The newspaper is published every Thursday with around . . . 500 print issues containing about 4-6 pages each." This information does not establish that Buxoroyi Sharif constitutes a professional or major trade publication or other major media. Rather, it appears to be a general-interest newspaper with limited, local circulation.

After the Director issued a request for evidence, three more pieces about the Petitioner appeared, all in [redacted] 2018, more than a year after the petition's filing date in July 2017. The Petitioner must meet all eligibility requirements at the time of filing the petition. 8 C.F.R. § 103.2(b)(1). The nearly simultaneous appearance of these three pieces, days before the deadline for the Petitioner to respond to the request for evidence, raises questions about their origin and purpose.

Also, the Petitioner did not show that these newly submitted materials appeared in qualifying media. One article appeared in The Bukharian Times, the "Weekly Newspaper of [redacted]." A second article appeared in Zamon-Times, a Russian-language publication originating from [redacted], New York, three miles from the [redacted] publisher of The Bukharian Times. Both articles show several of the same photographs of the Petitioner. Both publications appear to be narrowly tailored to expatriates from [redacted] Uzbekistan, who now reside in [redacted] New York.

A screen capture from a YouTube video, identified as an interview with [redacted]' shows only "1 view" of the video. The video and the "local craft" channel that posted it are no longer available on YouTube as of August 18, 2020.[2]

[2] The web address for the video, https://www.youtube.com/watch[redacted] is no longer active. The channel currently called "local craft" does not include the interview video, and did not become active until February 2020. Therefore, it cannot be the same channel that posted the interview with the Petitioner in August 2018. See https://www.youtube.com/channel/UCX-OIKmaPFTnc3DBtf_gJhw/about (last visited Aug. 18, 2020).

On appeal, the Petitioner maintains that he established that the published material appeared in qualifying media, but he does not elaborate except to refer back to the materials described above, which, as explained, do not show that the submitted materials meet the requirements.

The Petitioner has not satisfied this criterion.

> Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field. 8 C.F.R. § 204.5(h)(3)(v)

To satisfy this criterion, the Petitioner has submitted several letters, attributed to officials of various cultural organizations, but these letters are neither persuasive nor credible.

One letter states that the Petitioner "has made an original contribution of major significance to the field of traditional Uzbek village jewellery by preserving the unique artistic heritage of traditional Uzbek jewellery." Another letter indicates that the Petitioner "was able to revive [redacted] technique from the 19-20 centuries and to add to them his own developed unique creative patterns and ideas." The letters do not explain how preserving or reviving a traditional art form constitutes an original contribution, and the vague reference to the Petitioner's "own developed unique creative patterns and ideas" conveys no useful information about the nature of those ideas and does not explain how they are of major significance. Uncorroborated anecdotes about satisfied customers may attest to the Petitioner's skill as a jeweler, but do not distinguish the Petitioner's work from that of other competent artists in his field.

Two of the submitted letters describe the Petitioner's work in identical language. Both letters, for example, include this passage:

> In his work, [the Petitioner] was able to mix ethno-historical signs and symbols and the mytho-poetic semantics of ornamental motifs of different cultural epochs, as well as to perfect my technique of production, my use of precious metals and high-quality natural gems and minerals, to achieve the desired elevation of figurative perception of my designs.

The use of identical language across various letters from supposedly different sources can indicate that the assertions in these documents are not credible. See Surinder Singh v. BIA, 438 F.3d 145, 148 (2d Cir. 2006) (upholding an adverse credibility determination in asylum proceedings based in part on the similarity of the affidavits); see also Mei Chai Ye v. U.S. Dep't. of Justice, 489 F.3d 517, 519 (2d Cir. 2007) (concluding that an immigration judge may reasonably infer that when an asylum applicant submits strikingly similar affidavits, the applicant is the common source). In evaluating the evidence, the truth is to be determined not by the quantity of evidence alone but by its quality. See Matter of Chawathe, 25 I&N Dec. 376 (quoting Matter of E-M-, 20 I&N Dec. 77, 80 (Comm'r 1989). In this instance, the shared language is of particular concern because of the first-person references to "my use of precious metals" and "my designs."

The letters submitted by the Petitioner are of questionable origin, and do not specifically identify any original contribution of major significance to the field.

On appeal, the Petitioner maintains that he "submitted extensive evidence as to his original artistic contributions of major significance to his field of endeavor." Rather than elaborate upon this point by identifying those contributions and demonstrating their significance, the Petitioner asserts that the Director did not give sufficient weight to the letters submitted in support of the petition. We have explained, above, why those letters have negligible evidentiary weight.

The Petitioner has not shown that he has made original contributions of major significance in the field.

> Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media. 8 C.F.R. § 204.5(h)(3)(vi)

We disagree with the Director's conclusion that the Petitioner has met this criterion.

The Petitioner submits what he initially described as "[e]vidence of Beneficiary's authorship of publications in his field of endeavor." The Petitioner's wording, "authorship of publications," omits the regulatory reference to scholarly articles. A scholarly article should be written for learned persons in that field. ("Learned" is defined as "having or demonstrating profound knowledge or scholarship.") Learned persons include all persons having profound knowledge of a field.[3]

Initially, the Petitioner submitted a few photocopied pages of [redacted], described as a book for readers to "get acquainted with the modern master of jewelry art." The book appears to be very short; the page containing the "Conclusion" is numbered 23. The submitted pages consist mostly of large photographs, with text in large type. The submitted excerpts do not contain scholarly writing. Rather, they consist of general statements about jewelry, with some information about the Petitioner.

The Petitioner has since submitted a complete book entitled [redacted]. The book is dated 2018, after the July 2017 filing date. Therefore, it cannot establish eligibility as of the filing date. This book is deficient for several other reasons. Portions of the book are formatted in the manner of a scholarly article, with footnoted source citations, but other parts of the book provide only general information, consistent with popular rather than scholarly writing.

There are also editor credits, but inconsistencies in the text raise questions about the extent of thoroughness of any editorial review. The text is somewhat disjointed, changing subjects every few pages with no transitions, and there are several internal author credits which should not be necessary as the Petitioner is the sole credited author of the entire book. These traits suggest a compilation of previously published articles, but the Petitioner provides no evidence of their prior publication.

Also, several of the illustrations are uncaptioned with no explanation for their relevance to the surrounding text. Some portions of the book use the American spellings of the words "jeweler" and "jewelry," but other sections use the British spellings "jeweller" and "jewellery." The body of the text ends abruptly

[3] 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), http://www.uscis.gov/legal-resources/policy-memoranda.

with a description of [redacted] nose rings. These anomalies appear to be inconsistent with significant editorial review of the text.

The Petitioner has not shown that either of his books constitute professional or major trade publications or other major media. A partial photocopy of the back cover of [redacted] indicates that 100 copies of the book were printed; the incomplete copy contains no publication information. [redacted] appears to have been privately printed; the spine is blank and there is no ISBN number or UPC bar code. There is a reference to a publishing house, but only with respect to "typesetting." Furthermore, the record does not establish that the books have actually been published; printing and binding, by themselves, do not constitute publication.

The Petitioner has not satisfied the requirements of this criterion.

B. Final Merits Determination

Because the Director determined that the Petitioner had satisfied three of the initial evidentiary criteria, the Director then proceeded to a final merits determination to determine if the evidence demonstrates that the Petitioner has achieved sustained national or international acclaim consistent with extraordinary ability in his 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.[4]

While we disagree with the Director's conclusion that the Petitioner has met three of the initial criteria, we will briefly consider key findings from the Director's final merits determination. In that determination, the Director essentially stated that, while the Petitioner had satisfied the letter of the requirements for three of the regulatory criteria, the evidence submitted for that purpose does not establish sustained national or international acclaim or place the Petitioner at the top of his field. For example, regarding display of the Petitioner's work, the Director concluded that the Petitioner had satisfied the requirements of 8 C.F.R. § 214.2(h)(3)(vii), but did not establish the significance of the events where the Petitioner displayed his work or show that his participation demonstrates sustained national or international acclaim.

On appeal, the Petitioner does not address or rebut these specific points. Instead, the Petitioner asserts that the Director applied too stringent a standard of proof, and the Petitioner contends that the final merits determination should have followed the blueprint of a 1994 district court decision that is not binding in this case.

The standard of proof in these proceedings is the "preponderance of the evidence," which requires that the evidence demonstrate that the claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case. Matter of Chawathe, 25 I&N Dec. 376. In adjudicating the petition pursuant to the preponderance of the evidence standard, a director must

[4] See also 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), https://www.uscis.gov/legal-resources/policy-memoranda (stating that USCIS officers should then evaluate the evidence together when considering the petition in its entirety to determine if the petitioner has established, by a preponderance of the evidence, the required high level of expertise for the immigrant classification).

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. Id.

In this instance, there are several serious reasons to doubt the truth of assertions in the record. We explained these reasons above and need not repeat them here. The Petitioner has not established eligibility by a preponderance of the evidence, and the record does not contain any credible evidence that the Petitioner has earned sustained national or international acclaim in his field.

III. CONCLUSION

The Petitioner seeks a highly restrictive visa classification, intended for individuals at the top of their respective fields, rather than for individuals who are able to assemble testimonials attesting to their talent. Here, 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 is one of the small percentage who has risen to the very top of the field of endeavor.

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.

ORDER: The appeal is dismissed.