U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19819190

Date: MAR. 23, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a recording engineer and producer, 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 Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner had satisfied at least three of ten initial evidentiary criteria, as required. The matter is now before us on appeal. 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)(A) of the Act makes immigrant visas available to individuals with 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. These individuals must seek to enter the United States to continue work in the area of extraordinary ability, and their entry into the United States will substantially benefit 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 international recognition of an individual's achievements in the field through a one-time achievement in the form of a major, internationally recognized award. Or the petitioner can submit evidence that meets at least three of the ten criteria 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. If those standards do not readily apply to the individual's occupation, then the regulation at 8 C.F.R. § 204.5(h)(4) allows the submission of comparable evidence.

Once a petitioner has met the initial evidence requirements, the next step is a final merits determination, in which we 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).

II. ANALYSIS

The Petitioner began working in Brazil as a producer, musician, and engineer in the early 1990s. He stated that his "extensive work portfolio includes production and recording credits of hit albums for some of the most important artists in a variety of genres." The Petitioner has been in the United States since 2016 in O-1 nonimmigrant status.[1]

Because the Petitioner has not indicated or shown that he 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). Prior to the denial of the petition, the Petitioner claimed to have satisfied seven of these 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 individual in professional or major media;
- (v), Original contributions of major significance;
- (vii), Display at artistic exhibitions or showcases;
- (viii), Leading or critical role for distinguished organizations or establishments; and
- (x), Commercial success in the performing arts.

The Director concluded that the Petitioner had met only one criterion, pertaining to prizes or awards. On appeal, the Petitioner asserts that he also meets the criteria relating to membership in associations; published material; artistic display; and leading or critical roles. The Petitioner does not address or dispute the Director's conclusions regarding commercial success and original contributions, and therefore we consider those claims to be abandoned.[2]

We conclude that submitted articles from *O Globo* and *Áudio Música & Tecnologia* appear to meet the requirements of 8 C.F.R. § 204.5(h)(3)(iii) regarding published material about the individual in

[1] O-1 nonimmigrant status relates to extraordinary ability. Furthermore, in June 2021, while the present appeal was pending, the Petitioner filed a second immigrant petition on his own behalf, with receipt number [redacted], again seeking classification as an individual of extraordinary ability. The Director approved that petition in November 2022. Nevertheless, the records of proceeding for the approved petitions are not before us, and therefore we cannot compare the records to determine whether the approved petitions involved different facts, or were approved in error.

[2] *See Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012) (stating that when a filing party fails to appeal an issue addressed in an adverse decision, that issue is waived). *See also Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n.2 (11th Cir. 2005), citing *United States v. Cunningham*, 161 F.3d 1343, 1344 (11th Cir. 1998); *Hristov v. Roark*, No. 09–CV–27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (holding that a plaintiff's claims were abandoned as he failed to raise them on appeal to the Administrative Appeals Office).

professional or major trade publications or other major media. We will discuss the other claimed criteria 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 claimed that he "has either obtained or been nominated for at least two . . . Latin Grammys." The Director concluded that the Petitioner had satisfied the requirements of this criterion, but the record does not support this conclusion.

A petitioner must establish that the individual personally received the prize or award. *See generally* 6 *USCIS Policy Manual* F.2 appendix, https://www.uscis.gov/policy-manual.

Translated certificates from the Latin Academy of Recording Arts and Sciences (Latin Recording Academy) do not indicate that the Petitioner personally received or was nominated for a Latin Grammy. Rather, he received the certificates "in recognition of [his] participation as Mastering Engineer" on an album that won the Latin Grammy for Best [redacted] Album, and on another album nominated for the same award. The Petitioner's involvement in award-winning or nominated projects might be a factor to consider in a final merits determination, but the submitted certificates are not prizes or awards in their own right, and they are not evidence that the Petitioner won a Latin Grammy as claimed.

The Petitioner has not documented his receipt of any nationally or internationally recognized prizes or awards.

> *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 Petitioner is a voting member of the Latin Recording Academy and the Recording Academy, which awards the Grammys. The record shows that voting membership in both Academies requires a specified minimum number of recent commercial releases, either physical or digital.

The Director concluded that the Academies require members to be active participants in the recording industry, but do not require outstanding achievements of their members.

The Petitioner asserts, on appeal, that a productive recording career is inherently an outstanding achievement, but the Petitioner cites no evidence or source for this assertion.

Also, the Petitioner has not shown that recognized national or international experts are responsible for judging applications for membership in either Academy. The record shows that eligibility is a matter of releasing a certain number of recordings within a specified period of time, without regard to the commercial performance or artistic merit of those recordings. The record does not show that recognized national or international experts are responsible for counting each applicant's recordings to determine eligibility.

The Petitioner has not established that his Academy memberships require outstanding achievements, as judged by recognized national or international experts.

> *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 Petitioner did not initially claim to have satisfies this criterion, but in response to a request for evidence, the Petitioner stated that his "work has been displayed at the 16th Annual Latin Grammys, an artistic exhibition or showcase."

As discussed above, the Petitioner was credited as a mastering engineer on two albums that received Latin Grammy awards or nominations. The Petitioner has not established that an awards ceremony is an artistic exhibition or showcase that displays, rather than recognizes, the nominated works. Even then, the Petitioner has not submitted any evidence to show that his work as a mastering engineer was displayed at the award ceremony. In this regard, it bears repeating that the Petitioner has not shown that he personally won or was nominated for a Latin Grammy.

The Petitioner has not shown that his work was displayed at artistic exhibitions or showcases.

In light of the above conclusions, the Petitioner does not meet the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3). Detailed discussion of the remaining claimed criterion at 8 C.F.R. § 204.5(h)(3)(viii), relating to a leading or critical role for organizations with a distinguished reputation, cannot change the outcome of this appeal. Therefore, we reserve this issue. *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions 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 individual is otherwise ineligible).

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 lesser 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 conclusion 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. U.S. Citizenship and Immigration Services 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 has not shown a level of recognition of his work that indicates sustained national or international acclaim or demonstrates 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. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2). The Petitioner has had a successful career working

with a number of well-known artists on major record labels, but the record before us does not show that his work with these figures has earned him sustained national or international acclaim in his own right. The Petitioner has submitted letters from current or former executives of major recording companies, attesting to the Petitioner's involvement in successful projects, but the record provides little objective basis for comparing the Petitioner's achievements and recognition with those of other engineers and producers.

The Petitioner has not demonstrated eligibility as an individual of extraordinary ability. We will therefore dismiss the appeal.

ORDER: The appeal is dismissed.