U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF R-U-E-

DATE: AUG. 27, 2019

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a jurist, seeks classification as an individual of extraordinary ability in education. *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 Form I-140, Immigrant Petition for Alien Worker, concluding that although the Petitioner satisfied three of the initial evidentiary criteria, in which he must meet at least three, he did not show his sustained national or international acclaim and demonstrate that he is among the small percentage at the very top of the field of endeavor. In addition, the Director found that the Petitioner did not establish that he will continue to work in his area of extraordinary ability and that his entry will substantially benefit prospectively the United States.

On appeal, the Petitioner submits a brief, arguing that he has sustained the required acclaim and has risen to the very top of his field, that he will continue to work in his area of expertise, and that he will substantially benefit the United States.

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,
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> (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 claimed his most employment as a professor at the Universidad [redacted] in [redacted], Venezuela.[1] 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 three of the initial evidentiary criteria, awards under 8 C.F.R. §204.5(h)(3)(i), judging under 8 C.F.R. § 204.5(h)(3)(iv), and scholarly articles under 8 C.F.R. § 204.5(h)(3)(vi). The record reflects that the Petitioner authored legal reference books. Accordingly, we agree with the Director that the Petitioner fulfilled the scholarly articles criterion. However, for the reasons discussed below, we do not concur with the Director's findings that the Petitioner satisfied the awards and judging criteria.

[1] *See* the Petitioner's Form I-485, Application to Register Permanent Residence or Adjust Status, filed concurrently with his Form I-140.

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 determined that the Petitioner met this criterion based on the "Medalla Dia Nacional del Abogado." 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.[2] 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.[3] 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.

In his initial cover letter, the Petitioner claimed to have received the following awards: "Medal of Soldier Communication," "Grand Order of the Federal District – First Class," "Medal of Honor – First Class," "Medal of Honor – Second Class," "Merit of the Watcher," "Military Medal – Oder of the Air Force," and "Military Medal – [redacted]" Although he submitted several foreign language certificates as evidence of his awards, the Petitioner did not provide any English language translations. Any document in a foreign language must be accompanied by a full English language translation. 8 C.F.R. §103.2(b)(3). The translator must certify that the English language translation is complete and accurate, and that the translator is competent to translate from the foreign language into English. *Id.* In addition, the Petitioner did not offer evidence establishing that the military awards are nationally or internationally recognized for excellence in the education field.

In response to the director's request for evidence (RFE), the Petitioner made new claims of awards. Specifically, the Petitioner asserted that he received the "Medalla Dia Nacional del Abogado" (National Lawyer's Day Medal) and the "Orden de la Defensa Nacional" (Order of National Defense). However, the Petitioner did not provide evidence showing that he received these awards. Here, the Petitioner did not establish the claimed facts with unsupported testimonial evidence alone.

Moreover, the Petitioner offered a screenshot from two websites reflecting that the "Medalla Dia Nacional del Abogado" is presented by the [redacted] during the "National Day of the Lawyer" in Venezuela. Further, the Petitioner submitted screenshots from four websites regarding the issuance of the "Orden de la Defensa Nacional" to [redacted] and Army General [redacted] However, the Petitioner did not demonstrate that the awards are nationally or internationally recognized for excellence in his field of endeavor, education.

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.

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[2] *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.

[3] *Id.*

> *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's membership with [redacted] did not qualify for this criterion. In order to satisfy the regulation at 8 C.F.R. §204.5(h)(3)(ii), the Petitioner must show that membership in the association is based on being judged by recognized national or international experts as having outstanding achievements in the field for which classification is sought.[4]

Initially, the Petitioner provided a copy of his identity card confirming his membership with [redacted]. In addition, he offered screenshots from [redacted]com reflecting the history and background of [redacted] However, the evidence did not demonstrate the membership requirements for [redacted] As such, the Director requested the constitution or bylaws discussing the membership requirements. In response, the Petitioner did not address this issue or submit additional documentation for this criterion. Here, the Petitioner did not demonstrate that membership with [redacted] requires outstanding achievements, as judged by recognized national or international experts, consistent with the regulatory criterion.

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

> *Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.* 8 C.F.R. 204.5(h)(3)(iv).

The Director found that the Petitioner fulfilled this criterion based on judging a thesis and dissertation. This regulatory criterion requires a petitioner to show that he has acted as a judge of the work of others in the same or an allied field of specialization.[5] For the reasons outlined below, the record does not reflect that the Petitioner submitted sufficient documentary evidence demonstrating that he meets this criterion, and the Director's determination on this issue will be withdrawn.

The Petitioner claimed that he judged theses and dissertations at the "Bolivarian Republic of Venezuela Public Ministry [redacted]" and submitted foreign language documents without any English language translations. *See* 8 C.F.R. §103.2(b)(3). In addition, the Petitioner asserted that he judged two doctoral theses at the '[redacted] and [redacted] University" and offered a summary/excerpt translation for one foreign language document and no translation for the other. Because the Petitioner did not submit complete and accurate English language translations of the documents, we cannot meaningfully determine whether the translated material is accurate and supports his claims.

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[4] *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 6 (providing an example of admission to membership in the National Academy of Sciences as a Foreign Associate that requires individuals to be nominated by an academy member, and membership is ultimately granted based upon recognition of the individual's distinguished achievements in original research).

[5] *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8.

In addition, the Petitioner claimed that he has been a judge at the "Bolivarian Republic of Venezuela [redacted] Division of Research and Post-Graduate Studies" and submitted a partial translation of a foreign language document informing him that he "will be part of the Examining Jury" in his role as a "methodological Work Advisor." Likewise, the Petitioner asserted that he "was pre-selected as a Candidate to be a judge of the [redacted] by the Bolivarian Republic of Venezuela National Assembly of Judicial Nominations Committee" and offered a partial and summary translation of the foreign language documentation. Again, the Petitioner did not provide complete and accurate English language translations. Furthermore, a petitioner must show that he has not only been invited to judge the work of others, but also that he actually participated in the judging of the work of others in the same or allied field of specialization.[6] Here, the Petitioner did not demonstrate that he, in fact, participated on the examining jury or served as a judge on the judicial disciplinary court rather than being selected to judge.

For the reasons discussed above, the Petitioner did not establish that he participated as a judge of the work of others. Accordingly, we withdraw the decision of the Director for 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 claimed to meet this criterion based on a critical role as an advisor for the [redacted] in Venezuela.[7] 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.[8]

The record reflects that the Petitioner submitted his credentials from [redacted] reflecting his position as an advisor. In addition, he presented a memorandum informing him that he has "been designated to form part of the assembled team responsible for the Organizational Structure of the [redacted] Project." Further, the Petitioner provided an organizational chart showing that the [redacted] falls below the "Supreme Court of Justice."

Although the evidence indicates his role as an advisor, the Petitioner did not establish that his performance was critical to the [redacted] overall. Furthermore, the Petitioner did not show if he ever completed the organizational structure project, and how it ultimately contributed to the success or standing of [redacted] Moreover, while the organizational chart reflects the overall hierarchy, the Petitioner did not demonstrate how he significantly impacted the [redacted] as his role as an advisor. Here, the Petitioner's evidence does not signify an essential role to [redacted]

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[6] *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8.

[7] The Petitioner initially claimed eligibility for this criterion based on leading and critical roles for the [redacted], the [redacted] University," and the "Government of [redacted]" As evidence of his roles, he submitted foreign language documents without any English language translations. *See* 8 C.F.R. §103.2(b)(3). Moreover, in response to the Director's RFE, the Petitioner argued his eligibility for only a critical role with the [redacted]

[8] *See* USCIS Policy Memorandum PM-602-0005.1, *supra*, at 10.

In addition, the Petitioner did not demonstrate that [redacted] enjoys a distinguished reputation.[9] The Petitioner provided a screenshot indicating that "[i]n August 1999, the National Constitutional Assembly (ANC) declared a judicial emergency to reform the highly discredited judiciary" and "[b]y the end of the year, 200 judges had been fired, mostly for corruption." Moreover, the Petitioner submitted screenshots from websites regarding the mission, vision, and regulations of [redacted] Further, while the Petitioner presented screenshots reporting on meetings and events by [redacted], the record does not reflect that [redacted] garnered a distinguished reputation consistent with this regulatory criterion. Here, the evidence relates to the intended function and operation of [redacted] without establishing its standing or prominence.

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

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 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.[10] 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.

[9] *Id.* at 10-11 (defining *Merriam-Webster's Dictionary* definition of "distinguished" as marked by eminence, distinction, or excellence).

[10] As the Petitioner had not demonstrated his extraordinary ability under section 203(b)(1)(A)(i) of the Act, we need not consider whether he seeks to enter the United States to continue to work in his area of extraordinary ability under section 203(b)(1)(A)(ii) of the Act, and whether his entrance will substantially benefit prospectively the United States under section 203(b)(1)(A)(iii) of the Act.

ORDER: The appeal is dismissed.

Cite as *Matter of R-U-E-*, ID# 3936097 (AAO Aug. 27, 2019)