U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 5764846

Date: DEC. 12, 2019

Appeal of Texas Service Center Decision

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

The Petitioner, an orthopedic surgeon, 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 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.

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 two options for satisfying this classification's initial evidence requirements. A petitioner can either demonstrate a one-time achievement (that is, a major, internationally recognized award), or 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 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 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

The Petitioner has worked as an orthopedic surgeon and on the faculty of a hospital-affiliated medical school. He does not indicate that he intends to work in these capacities in the United States. Instead, he states that he seeks employment as a scientific advisor or consultant in orthopedics and traumatology.

The Petitioner has not indicated or established that he has received a major, internationally recognized award. Therefore, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x). The Director found that the Petitioner only fulfilled two of the initial evidentiary criteria, relating to judging the work of others and performing in a leading or critical role for organizations or establishments with a distinguished reputation.

On appeal, the Petitioner maintains that he meets one additional criterion (pertaining to remuneration), discussed below. We have reviewed all of the evidence in the record, and conclude that it does not show that the Petitioner satisfies the requirements of at least three criteria.

The Petitioner initially claimed to have met six criteria, including the following three:

> *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)
>
> *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)
>
> *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)

The Director found that the Petitioner had not met the above three criteria. On appeal, the Petitioner does not address or contest these findings. The purpose of an appeal is to identify erroneous conclusions of law or statements of fact. *See* 8 C.F.R. § 103.3(a)(1)(v). Because the Petitioner's appeal does not address the above findings, the Petitioner has abandoned the above criteria. *See Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005); *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885, at *1,

*9 (E.D.N.Y. Sept. 30, 2011) (the court found the plaintiff's claims to be abandoned because he did not raise them on appeal).

We will discuss the remaining three criteria below.

> *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)

We agree with the Director that the Petitioner satisfied this criterion through his participation in juries to evaluate of the work of graduate-level medical students.

> *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 Director determined that the Petitioner established eligibility for this criterion. A review of the record of proceeding, however, does not reflect that the Petitioner submitted sufficient documentary evidence establishing that he meets the regulatory requirements for the reasons outlined below.

In general, a leading role is evidenced from the role itself, and a critical role is one in which the individual was responsible for the success or standing of the organization or establishment.

The Petitioner stated that he performed in a leading or critical role as "Head of the Unit of Knee and Arthroscopic Surgery and Joint Replacement Surgery" at the Hospital Central [redacted] in [redacted] Venezuela, and a professor at the affiliated medical school at the University of [redacted] The Petitioner submitted letters from various co-workers and colleagues.

The Petitioner appears to have held a leadership position within a particular surgical unit at the hospital. But he did not submit objective documentary evidence to establish that his employers have distinguished reputations; that his position in charge of a specialized surgical unit was a leading or critical role for the hospital as a whole; or that his unit has a distinguished reputation in its own right. Similarly, the Petitioner has not shown that the University of [redacted] has a distinguished reputation, and a university faculty position is not automatically or presumptively a critical role.

> *Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.* 8 C.F.R. § 204.5(h)(3)(ix)

To satisfy this criterion, the Petitioner must submit evidence to (1) establish the level of his remuneration, and (2) allow a comparison between his remuneration and that of others in the field. We find that the Petitioner has not provided sufficient evidence to meet either of these requirements.

The Petitioner initially submitted a letter from a clinic in Venezuela, indicating that the Petitioner earned "an income of more tha[n] 70% of fees, when compared with the rest of the medical specialist[s]." The meaning of this statement is not clear from its phrasing, and the letter did not show the Petitioner's actual remuneration or provide an objective basis for comparison with the remuneration of others in his field.

The Director requested objective documentation of the Petitioner's remuneration and evidence to allow the required comparison with others in the field. In response, the Petitioner submitted the following earnings figures, in Venezuelan bolivares fuertes:[1]

2015	Bs.F.182,350,000.00
2016	391,000,000.00
2017	549,200,000.00
Total Income	1,922,200,000.00
January 2018	198,652,000.00
February 2018	214,544,160.00
March 2018	239,907,408.00
April 2018	310,470,000.00
May 2018	406,658,500.00
June 2018	450,990,200.00
Last Six Months Yearly Average	25,294,475.37

The Petitioner also showed that, given the conversion rates in effect as of March 8, 2019, Bs.F.25,294,475.37 were worth $2,532,613.30 in U.S. currency. The significance of the comparison is not clear, because, as explained below, the record does not adequately explain the origin of the Bs.F.25,294,475.37 figure.

The Director stated: "As of the date of this decision [March 14, 2019], the market rate of the Venezuelan Bolivar to the US dollar is 0.00003601," resulting in "an annual salary of $92,156.88," which "is significantly lower than the 2016 median salary [f]or a physician." To derive this figure, the Director relied on the exchange rate for VES, not VEF as the Petitioner did. Therefore, we withdraw the Director's specific finding regarding exchange rates.

Nevertheless, the financial figures are problematic for several other reasons:

- The accountant who prepared the above table stated that the figures derived from "bank statements, tax returns, agreements and other documents," but those documents are not in the record, and the accountant did not specify the amounts shown on individual documents. Because the Petitioner did not submit payroll or tax documents, we cannot determine whether the Petitioner's compensation increased substantially every month, or, instead, the figures represent cumulative totals, with the figures for each month or year added to the next. (The amount shown as the Petitioner's income for June 2018 is worth about $45 million in U.S. currency, given the cited exchange rate of roughly ten bolivares fuertes to the dollar. This amount appears to be implausibly high for a month's remuneration.)
- The table does not specify how much of the reported income was in the form of remuneration for services, rather than from other sources such as investments.

[1] We note that Venezuela revalued its currency in August 2018, with the new bolivar soberano (VES or B.S.) being phased in to replace the bolivar fuerte (VEF or B.F.), although trading continues in both currencies. All the figures shown above predate the conversion and therefore represent bolivares fuertes. Information about the currency conversion is available through links embedded at http://bcv.org.ve/billetes-y-monedas/bolivar-soberano, last visited Nov. 20, 2019.

- The annual figures for 2015 through 2017 do not add up to the amount shown as "Total Income" directly beneath those figures.
- The monthly figures shown for January to June of 2018 have no discernible relation to the much lower figure identified as the "Last Six Months Yearly Average." The record does not show how this average was calculated.

Given these deficiencies, the Petitioner has not provided sufficient evidence to establish his actual remuneration for services.

In an effort to provide a basis to compare his income with that of others in the field in Venezuela, the Petitioner submitted a printout from PayScale, showing the following figures for Venezuela as of December 7, 2017:

Physician / General Practice	Bs.750,900
Physician / Internal Medicine	1,368,000

The Petitioner resubmits this printout on appeal, and, comparing the Bs.1,368,000 figure to Bs.549,200,000.00 from the accountant's table, states that he "earns almost 400 [times] more" than "the maximum amount made by a physician in Venezuela in December 2017."

The PayScale printout is deficient for several reasons:

- The printout shows "Salary" information, which does not appear to take into account other forms of remuneration such as bonuses and fees for specific services. Without knowing such figures, both for the Petitioner and for others in his field, a fair comparison is not possible.
- The Petitioner is an orthopedic surgeon, not a general practitioner or internist.
- The Petitioner earned remuneration not only as a physician, but also as a university faculty member. There is no indication that the individuals surveyed for the PayScale chart held paid academic positions.
- The chart refers to the above amounts as both "Average" and "Median Salary," but the terms are not necessarily interchangeable. (For data sets with wide ranges of values, the arithmetic *mean* may differ significantly from the *median*.)
- The chart shows the same figures for the "Average" and "Max[imum]" salaries.
- The chart does not specify the interval of the salaries (e.g., weekly, monthly, or annual).
- An annotation on the chart shows that only 10 individuals provided salary information. This sampling is too small to support any larger or general conclusions.

The Petitioner's claim of high remuneration rests on incomplete, uncorroborated, and questionable numbers. We agree with the Director that the Petitioner has not met his burden of proof with respect to this criterion.

III. CONCLUSION

The Petitioner seeks a highly restrictive visa classification, intended for individuals at the top of their respective fields. 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 that the significance and recognition of his medical career are indicative of the required sustained national or international acclaim or that they are 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 and 8 C.F.R. § 204.5(h)(2).

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

ORDER: The appeal is dismissed.