U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 5779473

Date: DEC. 30, 2019

Appeal of Nebraska Service Center Decision

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

The Petitioner, a human resources manager, 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 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 a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the recognition of his or her 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 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).

II. ANALYSIS

The Petitioner is currently employed as "head of people" at [redacted] a financial company specializing in cryptocurrency.

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 initially claimed to have met seven of the ten criteria. The Director found that the Petitioner met two of the evidentiary criteria, relating to performing in a leading or critical role for a distinguished organization under 8 C.F.R. § 204.5(h)(3)(viii) and commanding high remuneration under 8 C.F.R. § 204.5(h)(3)(xi). On appeal, the Petitioner asserts that he also meets three other evidentiary criteria as discussed below. After reviewing all of the evidence in the record, we find that the Petitioner has not satisfied any criteria beyond the two that the Director granted.

> *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 graduate of [redacted] University's [redacted] School ([redacted] School), and claims two qualifying memberships through his continued work on behalf of the [redacted] School. The Petitioner claimed that he "was invited to partner with the [redacted] . . . the world's leading partnership between the global human resources management industry and academia." The Petitioner is also part of the [redacted] School's Ambassador Program. Ambassadors interview prospective graduate students and provide recommendations to the graduate admissions council.

The dean of the [redacted] School stated:

> Since graduation, [the Petitioner] has held roles of increasing responsibility with innovative global technology companies like [redacted] . . . It is clear that he has been a "superstar" in his field, quickly ascending the corporate ladder. For these reasons, he has been routinely invited to attend the "Emerging Leaders" event organized

> by . . . [redacted] [which] brings together alumni who are leading (arguably the best) professionals in the field of Human Resources and Organizational Development to exchange best practices as well as new strategies and programs with thought-leaders from [redacted]

The dean did not state that the Petitioner was "invited to partner" with [redacted] only that the Petitioner was among alumni who were "invited to attend" a [redacted] event. The dean added that "Ambassadors are carefully chosen for their superior accomplishments and high profile." The ambassadors are also [redacted] School alumni, rather than a cross section of the field.

The Director asked the Petitioner to submit evidence of the membership requirements for [redacted] In response, the director of [redacted] stated:

> One of the more strategic initiatives of [redacted] is to help mentor and develop the next generation of strategic HR leaders who will go on to take executive roles in global corporations . . . . To this end, we started the Emerging Leaders Program in 2015 where we carefully selected invited alumni . . . to participate in the program. One of the key criteria to be invited to be part of this select group is . . . [a] rate of professional growth which far exceeds their other peers. . . .
>
> [The Petitioner] is a great example of the criteria elucidated above. . . . [The Petitioner] has been a consistent and valuable addition to the [redacted] Emerging Leaders program year after year.

The Director interpreted the above-quoted letter to mean that [redacted] "is an advanced course of instruction in human resources to which the petitioner was invited due to his career accomplishments." The Director found that the Petitioner did not show that participation in a "course of study constitutes an 'association in the field,'" or that admission to the program was contingent on outstanding achievements.

On appeal, the Petitioner disputes the Director's finding that [redacted] is a "course of instruction." We agree that [redacted] is not a course of instruction. Nevertheless, the Petitioner's evidence is deficient in crucial ways. The Petitioner submitted no documentary evidence to show that he is a member of [redacted] or to establish the membership requirements to join [redacted] even after the Director specifically requested such evidence. [redacted] officials praised the Petitioner but never called him a member of [redacted] They stated only that the Petitioner routinely participates in "Emerging Leaders," which one official called a "program," and another called an "event," a term suggesting a very short-term occurrence. A mentoring and career development program or event is not an association, and attendance at such an event is not membership in an association.[1]

The Petitioner has not established that he is a member of [redacted] (as opposed to a participant in [redacted] programs), and therefore the information about [redacted] cannot satisfy the requirements of this criterion.

[1] Had this case proceeded to a final merits determination, the Petitioner's ongoing participation in the Emerging Leaders program would have been highly relevant to the outcome of the petition. The Petitioner seeks an immigrant classification intended for individuals who are already at the top of the field, rather than making progress in that direction. A successful petition must rest on documented achievements, rather than on expectations, however solidly grounded those expectations appear to be.

Likewise, the Petitioner did not establish that the [redacted] School's Ambassador Program is an association in its own right, with members chosen by national or international experts in their fields. Rather, the small amount of available information indicates that ambassadors are chosen annually from amongst the [redacted] School's alumni on an *ad hoc* basis to assist with each year's interview process.

The Petitioner has not established that he is a member of any association in the field which requires outstanding achievements of its members, as judged by recognized national or international experts in their disciplines or fields.

> *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 Petitioner also contends that his work with the [redacted] School's Ambassador Program satisfies the criterion with respect to participation as a judge of the work of others in the same or an allied field of specification.

The dean of the [redacted] School stated the following in a letter submitted by the Petitioner:

> [The Beneficiary] has . . . been part of the Ambassador Program of [redacted] School, which assists the Graduate Committee in the admissions process by interviewing prospective applicants for the graduate masters program and providing input that is important to the final decision made by the graduate admissions committee. . . . Ambassadors are carefully chosen [from among [redacted] School alumni] for their superior accomplishments and high profile.

The Director found that the Petitioner had not judged "the work of his peers" in "a formal . . . capacity," but rather had engaged in "mentoring and evaluation of candidates for his school."

On appeal, the Petitioner asserts that the Director impermissibly introduced new and artificially restrictive requirements, such as formal designation as a judge, and that those being judged are "peers" of those performing the judging. There is substance to these objections, but the Petitioner has not established that he satisfies the criterion.

The Petitioner has not shown that he decides on admissions to the graduate program. Instead, he provides feedback which is one of several weighted factors that the admissions committee takes into consideration. The record does not include documentary evidence relating to the Ambassador Program to show how much weight the evaluation receives or to specify the exact role that ambassadors play in the admissions process. The reference to "prospective applicants" appears to imply that the interviewees have not yet applied to the program at the time of the interviews, in which case the interview would be a very preliminary stage in the admissions process.

Furthermore, the wording of the regulation calls for participation as a judge of the *work* of others in the same or allied field. The Petitioner notes that "serving as a member of a Ph.D. dissertation committee . . . satisfies this criterion." In that example, the committee evaluates specific, identifiable work product (the

dissertation). Sitting for an interview is not work in the field, and the Petitioner has not shown that [redacted] School ambassadors evaluate factors other than beyond the impressions they receive during those interviews. Also, because the graduate program is for a master's degree, the prospective applicants would appear to be undergraduate students who are not yet employed in the field of human resources management or an allied field. Therefore, the Petitioner has not established that he has participated as a judge the work of the prospective students, in the same or an allied field for which he seeks classification.

The Petitioner has not submitted detailed, corroborated information about the Ambassador Program to show that the Petitioner's involvement amounts to participation as a judge of the work of others.

> *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)

The Petitioner initially stated that he "authored articles in the field of human resources for major media outlets," which is not the wording of the regulation. The Petitioner submitted printouts from two articles published online "in a Singapore-based publication called Data Driven Investor."

The Director found that the Petitioner's published work was written for the general public, rather than for specialized, scholarly readership.

On appeal, the Petitioner disputes the Director's definition of "scholarly articles," saying that such a definition does not appear in the regulations. The Petitioner contends: "An article is scholarly so long as it demonstrates the author's knowledge on a particular subject matter."

The Petitioner cites an unpublished district court decision from 2008 in support of this argument. In contrast to the broad precedential authority of the case law of a U.S. circuit court, we are not bound to follow the decision of a U.S. district court, even if that decision is published and concerned a matter in in the same district with jurisdiction over the matter under consideration. *Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). In this instance, the decision is not published, and the case at hand is not within the jurisdiction of the Eastern District of Pennsylvania, source of the cited decision. Although the reasoning underlying a district judge's decision will be given due consideration when it is properly before us, the analysis does not have to be followed as a matter of law. *Id.* at 719.

One authority that *is* binding in this proceeding is 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* (Dec. 22, 2010), http://www.uscis.gov/legal-resources/policy-memoranda. Elsewhere in the appellate brief, the Petitioner cites this very memorandum, and acknowledges its authority. Regarding scholarly articles, the memorandum states:

> As defined in the academic arena, a scholarly article reports on original research, experimentation, or philosophical discourse. It is written by a researcher or expert in the field who is often affiliated with a college, university, or research institution. In general, it should have footnotes, endnotes, or a bibliography, and may include graphs, charts, videos, or pictures as illustrations of the concepts expressed in the article.

> For other fields, a scholarly article should be written for learned persons in that field. ("Learned" is defined as "having or demonstrating profound knowledge or scholarship").

Id. at 9. Furthermore, the cited district court decision focused on the definition of the word "scholarly," rather than the phrase "scholarly articles." The regulation does not define "scholarly articles," but that phrase is a term of art with an existing consensus on its meaning.[2] This consensus is evident from a review of the traits of articles and publications tracked by Google Scholar, https://scholar.google.com/, as opposed to the standard Google search engine.

The Petitioner has not shown that his articles in *Data Driven Investor* constitute scholarly articles. They appear, instead, to be "blog" posts offering general personnel advice to entrepreneurs.

Initially, the Petitioner also claimed to have satisfied two other criteria, pertaining to published material about the alien under 8 C.F.R. § 204.5(h)(3)(iii) and original business-related contributions of major significance under 8 C.F.R. § 204.5(h)(3)(v). The Director found that the Petitioner had not satisfied these criteria, and on appeal, the Petitioner does not contest or rebut those findings. Therefore, we consider the Petitioner to have abandoned these issues. *See Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005); *see also*, *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 as he failed to raise them on appeal to the AAO).

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.

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.

[2] As a representative example, we take administrative notice that [redacted] University, where the Petitioner earned his master's degree, has a guide for "Distinguishing Scholarly from Non-Scholarly Periodicals." This guide differentiates between "scholarly or peer-reviewed journal articles," which are typically peer-reviewed, include footnotes, and "assume[] some technical background on the part of the reader," and "popular articles," which are written for a wider audience. Source: http://guides.library.[redacted]edu/scholarlyjournals/scholarly (last visited Dec. 11, 2019).