U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 5845177

Date: JAN. 28, 2020

Appeal of Nebraska Service Center Decision

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

The Petitioner, a master mariner, 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 initially approved the petition. However, the Director subsequently revoked the approval, concluding that the Petitioner had not satisfied any of the initial evidentiary criteria, of which he must meet at least three. In addition, the Director found that the Petitioner did not establish that he will continue to work in his area of extraordinary ability.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* 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) 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
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> (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 he or she 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). 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).

With respect to revocations, section 205 of the Act, 8 U.S.C. § 1155, states, in pertinent part, that the Secretary of Homeland Security "may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204."

Regarding revocation on notice, the Board of Immigration Appeals has stated:

> In *Matter of Estime*, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if unexplained and unrebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

Matter of Ho, 19 I&N Dec. 582, 590 (BIA 1988) (citing *Matter of Estime*, 19 I&N Dec. 450 (BIA 1987)).

By itself, the Director's realization that a petition was incorrectly approved is good and sufficient cause for the revocation of the approval of an immigrant petition. *Id.* The approval of a visa petition vests no rights in the beneficiary of the petition, as approval of a visa petition is but a preliminary step in the visa application process. *Id.* at 589. A beneficiary is not, by mere approval of the petition, entitled to an immigrant visa. *Id.*

II. ANALYSIS

The Petitioner claims to be "currently employed as a Master with [redacted] . . on a 4+ month assignment on the [redacted]."[1] 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).

[1] *See* appeal brief submitted on May 8, 2019.

In revoking the petition, the Director determined that the Petitioner did not fulfill any of the initial evidentiary criteria. On appeal, the Petitioner asserts that he meets six criteria, discussed below. After reviewing all of the evidence in the record, we conclude that the record does not support a finding that the Petitioner satisfies the requirements of at least three criteria.

> *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 argues that he meets this criterion based on membership with the Foreign Owners Representatives and Ship Managers Association (FOSMA). In order to satisfy this criterion, 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.[2]

He submits two certificates from the "FOSMA Maritime Institute and Research Organisation [FOSMA MIRO]" reflecting his completion of a course in 1998 and refresher training in 2001. However, the certificates do not establish his membership with FOSMA; rather, they demonstrate that he participated and completed two courses offered by FOSMA MIRO. Further, the Petitioner did not offer evidence from FOSMA confirming his membership, nor did he show that only FOSMA members are permitted to attend FOSMA MIRO courses.

In addition, he presents screenshots from fosma.net regarding background and objectives showing that FOSMA "provide[s] body representative of the foreign owners and ship manager operating in India for the purpose of developing, promoting and protecting their business activities and the interest of foreign owners in India" and "encourage[s] and promote[s] cordial relationship and unanimity among representatives of foreign owners and ship managers on all subjects involving their common good." Moreover, the screenshots indicate that membership requires the applicant to be engaged in recruiting seafarers on behalf of ship managers or ship owners or placing seafarers with ship owners, registration with the Directorate General of Shipping as a recruitment service provider holding a valid license, charitable donation to FOSMA MIRO, and compliance and subscription to various fees. Here, the Petitioner did not establish that the requirements rise to the level of "outstanding achievements" consistent with this regulatory criterion. Instead, the membership requirements show involvement in recruitment, charitable donation, and fee payments, which are not tantamount to outstanding achievements.[3]

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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 (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).

[3] *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 7 (instructing that relevant factors that may lead a conclusion that the alien's memberships in the associations were not based on outstanding achievements in the field include, but are not limited to, instances where the alien's membership was based solely on a level of education or years of experience in a particular field).

Moreover, the screenshots indicate that the membership application is "put up at the Board of Directors meeting." However, the Petitioner did not identify the members on the Board of Directors, nor did he establish that it is comprised of nationally or internationally recognized experts.

For the reasons discussed above, the Petitioner did not demonstrate that he satisfies 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 specialization for which classification is sought.* 8 C.F.R. § 204.5(h)(3)(iv)

The Petitioner contends to fulfill this criterion based on teaching "at [redacted] Academy as a visiting faculty [sic] the course [redacted]" 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.[4] He submits a letter from [redacted] Academy stating that the Petitioner "has been teaching at our [redacted] ACADEMY' as visiting faculty" on three occasions. In addition, he provides the course outline, time table, syllabus, and handout. Moreover, he presents "About Us" screenshots from [redacted] com.

Here, the Petitioner has not sufficiently shown that he participated as a judge of the work of others consistent with this regulatory criterion. Specifically, the Petitioner did not establish how teaching students a course is tantamount to participating as a judge of the work of others. Moreover, the Petitioner did not demonstrate his designation as a judge, nor did he show that he actually judged the work of others in the same of similar field of specialization. In addition, the Petitioner did not identify who he judged. Without further documentation, his evidence regarding teaching a course is inadequate to satisfy this criterion.

Accordingly, the Petitioner did not establish that he meets 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).

The Petitioner argues that he "exhibits original contributions with each successful ship-to-ship (STS) operations" and his "operation of [] large tankers is in itself an indication of originality." In order to satisfy the regulation at 8 C.F.R. § 204.5(h)(3)(v), a petitioner must establish that not only has he made original contributions but that they have been of major significance in the field.[5] For example, a petitioner may show that his contributions have been widely implemented throughout the field, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance in the field.

Although he references his submission of information relating to supertankers and the international maritime transportation field, as well as discussing various oil spills, the Petitioner did not demonstrate how his contributions are considered both original and of major significance in the field. Moreover,

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

[5] *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8-9 (finding that although funded and published work may be "original," this fact alone is not sufficient to establish that the work is of major significance).

the Petitioner did not establish how operating a ship, supertanker, or other large carrier is tantamount to an original contribution of major significance in-and-of-itself. Here, the Petitioner did not show how operating a crude carrier without incurring incidences or causing a maritime disaster constitutes an original contribution of major significance. Further, we are not persuaded that each and every successful operation of a ship, either by the Petitioner or by any other master mariner, represents an original contribution of major significance in the field.

Likewise, he offers recommendation letters from [redacted] and [redacted] who commented on the Petitioner's skills and experience. For instance, [redacted] stated that "[t]here are fewer than 100 skilled, experienced and approved Mooring Masters in the world and [the Petitioner], is one among them." Moreover, [redacted] indicated that the Petitioner "is a very experienced Mariner, serving on board as well as commanding all sizes of Oil Tankers in his extensive sea career." However, having a diverse, unique, or special skill set is not a contribution of major significance in-and-of-itself. Further, the record must be supported by evidence that the Petitioner has already used those skills and talents to impact the field at a significant level, which he has not shown. Similarly, the Petitioner has not demonstrated how his experience in the field somehow resulted in an original contribution of major significance. In addition, the letters do not establish the Petitioner's impact in the overall field beyond working for various employers.[6]

In the case here, the Petitioner's letters do not contain specific, detailed information explaining the unusual influence or high impact his personal contributions have had on the general field. Letters that specifically articulate how a petitioner's contributions are of major significance to the field and its impact on subsequent work add value.[7] On the other hand, letters that lack specifics and use hyperbolic language do not add value, and are not considered to be probative evidence that may form the basis for meeting this criterion.[8] Moreover, USCIS need not accept primarily conclusory statements. *1756, Inc. v. The U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.C. Dist. 1990).

For the reasons discussed above, considered both individually and collectively, 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).

The Petitioner claims that he "has prepared and authored several courses in his field." Moreover, he asserts that "[t]here are no scholarly journals in seafaring, but these course materials are comparable to scholarly articles for Mooring Masters because they are a prerequisite for seafarers on tankers," and "[t]here are no comparable peer-reviewed journals for international maritime transportation."

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[6] *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8-9; *see also Visinscaia*, 4 F. Supp. 3d at 134-35 (upholding a finding that a ballroom dancer had not met this criterion because she did not corroborate her impact in the field as a whole).

[7] *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8-9.

[8] *Id.* at 9. *See also Kazarian*, 580 F.3d at 1036, *aff'd in part*, 596 F.3d at 1115 (holding that letters that repeat the regulatory language but do not explain how an individual's contributions have already influenced the field are insufficient to establish original contributions of major significance in the field).

The regulation at 8 C.F.R. § 204.5(h)(4) allows for comparable evidence if the listed criteria do not readily apply to his occupation.[9] A petitioner should explain why he has not submitted evidence that would satisfy at least three of the criteria set forth in 8 C.F.R. § 204.5(h)(3), as well as why the evidence he has included is "comparable" to that required under 8 C.F.R. § 204.5(h)(3).[10]

Here, the Petitioner did not provide documentation supporting his assertion regarding the non-existence of scholarly articles and journals. General assertions that any of the ten objective criteria do not readily apply to an occupation are not probative and should be discounted.[11] Furthermore, the fact that the Petitioner did not offer documentation that satisfies the scholarly articles criterion is not evidence that a master mariner could not do so. In addition, the Petitioner has not shown why he cannot submit evidence that meets at least three criteria. In fact, as indicated above, the Petitioner claims to meet five other criteria. Moreover, the Petitioner did not establish how course materials at an academy are "truly comparable" to the authorship of scholarly articles in professional or major trade publications or other major media.[12]

For these reasons, the Petitioner did not establish that he qualifies for the scholarly articles criterion through the submission of comparable evidence.

III. CONCLUSION

We find that the Petitioner does not satisfy any of the criteria discussed above. Although he submits evidence for two additional criteria on appeal, relating to leading or critical role at 8 C.F.R. § 204.5(h)(3)(viii) and high salary at 8 C.F.R. § 204.5(h)(3)(ix), we need not reach these additional grounds. As the Petitioner cannot fulfill the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3), we reserve these issues.[13] Accordingly, 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 reflects 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). Although

[9] *See* USCIS Policy Memorandum PM-602-0005.1, *supra*, at 12.
[10] *Id.*
[11] *See* USCIS Policy Memorandum PM-602-0005.1, *supra*, at 12.
[12] *Id.*
[13] *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).

the Petitioner has experience as a master mariner, the record does not contain sufficient evidence establishing that he is among the upper echelon in his field.

For the reasons discussed above, the Petitioner has not demonstrated his eligibility as an individual of extraordinary ability.[14] The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.

[14] As the Petitioner has 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.