U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 8396610

Date: MAY 28, 2020

Appeal of Nebraska Service Center Decision

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

The Petitioner, an oncologist, 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 Director also found that the Petitioner had not established that she would be able to continue working in the field in the United States. 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 their 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 a director physician of the Department of Medical Oncology at [redacted] Hospital, a teaching hospital of [redacted] University in [redacted], China.

A. Translations

Apart from the specific requirements relating to various evidentiary criteria discussed below, the regulation at 8 C.F.R. § 103.2(b)(3) states: "Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English." The Petitioner's initial submission included one certification, attesting collectively to every translated document in the record. The certification, however, did not list or describe the translated documents. The Director found that such a blanket certification is not satisfactory; it does not establish a connection between the certification and any particular translation in the record.

The Director raised this issue in a request for evidence, but the Petitioner's response included new, specific certifications for only a few documents in the record.

B. Evidentiary Criteria

Because the Petitioner has not indicated or established that she has received a major, internationally recognized award, she 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 criteria, summarized below:

- (ii), Membership in associations that require outstanding achievements;
- (iii), Published material about the alien in professional or major media;
- (iv), Participation as a judge of the work of others;
- (v), Original contributions of major significance;
- (vi), Authorship of scholarly articles;

- (viii), Leading or critical role for distinguished organizations or establishments; and
- (ix), High remuneration for services.

The Director found that the Petitioner met two of the criteria, numbered (iv) and (vi). On appeal, the Petitioner asserts that she also meets two other criteria, numbered (iii) and (ix). The Petitioner does not contest the Director's conclusions regarding the criteria numbered (ii), (v), and (viii), and therefore we consider those issues to be abandoned.[1]

After reviewing all of the evidence in the record, we agree with the Director that the Petitioner has met only two criteria, numbered (iv) and (vi). Below, we explain our findings regarding the two criteria discussed on appeal.

> *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 Petitioner states that she "and her work in Oncology have been published in professional or major trade publications or other major media outlets." This claim deviates from the wording of the regulation, which requires the published material to be *about* the Petitioner. Some of the submitted articles are by the Petitioner, rather than about her. For example, the Petitioner wrote an article in the *China Medical Tribune*, describing studies of various cancer drugs. A number of these articles are essentially scholarly articles, which fall under a different criterion (8 C.F.R. § 204.5(h)(3)(vi)) that the Petitioner has satisfied.

Several other articles, many lacking the required author credit, reported on medical conferences, summarizing presentations made by the Petitioner and other researchers. These articles are not about the Petitioner; they are about the findings that resulted from research that the Petitioner (and others) conducted.

An article in the *China Medical Tribune*, again with no byline author credit, reported on the establishment of the [redacted] Sarcoma Clinical Center. The article included interviews with the Petitioner and another official, who answered questions about the Center and the types of cancers to be treated there. As above, the Petitioner is a quoted source of information, but the article is not about her.

An article from the *Xinmin Evening News* has an author credit, but, like the other articles, is not about the Petitioner. Instead, the article features an interview with the Petitioner, who discusses the prevention, diagnosis, and treatment of lymphoma. A brief biographical sketch at the end of the article lists the Petitioner's credentials, but this does not mean that the article constitutes published material about the Petitioner.

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[1] *See 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); *see also Hristov v. Roark*, No. 09–CV–27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (plaintiff's claims were abandoned as he failed to raise them on appeal to the AAO).

On appeal, the Petitioner submits an article published in February 2019, four months after the Petitioner filed the petition. This evidence cannot retroactively establish eligibility as of the filing date. *See* 8 C.F.R. § 103.2(b)(1), which requires every petitioner to meet all eligibility requirements as of the time of filing.

The Petitioner has not satisfied the requirements of this criterion.

> *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)

A letter from [redacted] Hospital lists the following remuneration paid to the Petitioner (some figures are identified as approximations):

	2015	2016	2017
Base Salary	¥70,000	¥75,000	¥80,000
Bonus and Remuneration	530,000	625,000	720,000
Total Income	600,000	700,000	800,000

Beyond her hospital salary, income certificates from [redacted] Human Resources indicate that the Petitioner received income for "services externally dispatched by our company," such as "lecture fee, consultation fee, etc.," in the following amounts:

2015	2016	2017
¥822,040	¥931,030	¥1,026,000

Tax documents identify "Taxable income" originating from [redacted] Hospital and several pharmaceutical companies:

	2015	2016	2017
[redacted] Hospital	¥227,704.68	¥405,160.13	¥566,349.69
Other sources	41,087.17	91,962.13	44,577.16
Total Income	268,791.85	437,793.17	610,926.85

The Director found the above figures to be inconsistent, and therefore lacking in credibility. On appeal, the Petitioner disputes this conclusion, stating that the Director "failed to take China's tax law system and medical income system into account." The Petitioner also asserts that the income from [redacted] Human Resources is separate from the income from [redacted] Hospital. The Petitioner, however, does not adequately explain why the "Taxable Income" specifically attributed to [redacted] does not match the figures on the letter from that hospital.

The Petitioner asserts that her "monthly wages and salaries from [redacted] Hospital in 2017 was approximately RMB 66,666," but, looking at the hospital payments on the 2017 tax documents, even if we add the ¥566,349.69 in "Taxable income" to the ¥130,094.64 listed as "Paid-in tax amount" (which should not be necessary, as "taxable income" is not the same as "after-tax income"), those two amounts still add up to only ¥696,444.33, nearly ¥100,000 less than the claimed figure of ¥800,000 for the year. The Petitioner has not credibly reconciled the figures on the different documents.

Apart from the inconsistencies, the Petitioner has not provided a sufficient basis for comparison to show that her remuneration for services as a director physician is significantly high in relation to other director physicians. The Petitioner submits job announcements for three oncologist positions in China. The two highest-paying positions offer ¥15,000-20,000 per month, which annualizes to ¥180,000-240,000 per year. A job announcement for a director physician offers ¥150,000-200,000 per year. The Petitioner did not establish that the amounts in these four job announcements are representative of the Petitioner's occupation. Three of the announced positions are for oncologists without the added responsibilities of a director physician, and the one director physician position is for an ophthalmologist rather than an oncologist.

Furthermore, the amounts in the job announcements are considerably lower than the Petitioner's total annual income, but much higher than her base salary, which accounts for less than 11% of her stated hospital earnings (according to the letter from the hospital). The Petitioner submits excerpts from a 2013 survey, indicating that "monthly bonuses paid to nurses and physicians on average make up nearly 45% of their reported incomes," with that figure ranging from 0% to 80%. The report did not discuss the bonus structure for director physicians. The report indicated that "[b]onuses accounted for at least half of 21 managers' incomes," but there is no accompanying breakdown of data.

The Petitioner also submits a survey report from the Chinese Medical Doctor Association, indicating that physicians at "the senior level" reported an average annual income of ¥107,813.18. The document does not clarify whether this amount reflects total income or base salary, and does not differentiate between director physicians and doctors with entirely clinical responsibilities.

Furthermore, the record shows that the Petitioner derives income from multiple sources. Comparing this aggregate income with any single source of remuneration would, therefore, tend to be lopsided rather than an even one-to-one comparison.

The Petitioner provides salary data from the U.S. Department of Labor, but these figures concern physicians in the United States, not director physicians in China, and therefore the statistics do not apply to the case at hand.

For the above reasons, the evidence submitted does not consistently establish the amount the Petitioner earns, or suffice to establish how her total compensation compares with that of other director physician oncologists in China.

C. Intended Employment in the United States

Section 203(b)(1)(A)(ii) of the Act requires that the alien seeks to enter the United States to continue work in the area of claimed extraordinary ability. The Director found that the Petitioner has not established her ability to practice medicine in the United States.

Because the Petitioner has not met the threshold criteria for eligibility as an alien of extraordinary ability, discussion of this separate issue cannot change the outcome of this appeal. Therefore, we reserve this issue.[2]

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 appears to have authority over one department of a major hospital in Shanghai, but the record does not include the extensive documentation of sustained national or international acclaim required by section 203(b)(1)(A) of the Act.

For the reasons discussed above, the Petitioner has not demonstrated her eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.

[2] *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 applicant is otherwise ineligible).