



U.S. Citizenship
and Immigration
Services

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 11928922

Date: NOV. 24, 2020

Appeal of Texas Service Center Decision

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

The Petitioner, a finance business partner, 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 met the initial evidence requirements of the classification through evidence of a major, internationally recognized award or meeting at least three of the ten evidentiary criteria at 8 C.F.R. § 204.5(h)(3).

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,
- (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

international 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 criteria 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) (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).

II. ANALYSIS

The Petitioner is a finance business partner who has been employed in the field of accounting for more than 20 years. At the time of filing she was working for an online gaming company, and indicated that she intends to continue working as a finance business partner in the United States within the gaming industry.

A. 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 Director found that the Petitioner met two of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), relating to her participation as a judge of the work of others and her leading or critical role for association with a distinguished reputation. On appeal, the Petitioner asserts that she also meets the evidentiary criteria relating to membership in an organization which requires outstanding achievements of its members. After reviewing all of the evidence in the record, we find that she has not established that she meets the requisite 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 bases her claim to this criterion upon her membership in two professional associations: the Chartered Institute of Management Accounting (CIMA) and the Institute of Financial Accountants (IFA). The record includes evidence that she was admitted as a fellow of CIMA in August 2018, and as a fellow of IFA three months later. She also submitted evidence about the membership requirements for both associations, which included bylaws, letters and other documentation. We will consider the material relating to both associations below.

The requirements for membership as a fellow in CIMA are included at Part I of its regulations, which are either part of or an addendum to the association's bylaws. They state that a candidate must already be an associate, affiliate or registered student of the organization, pass or be exempt from any required examinations, hold an accounting qualification, have three years of practical experience at a senior and responsible level (in addition to the three years of experience needed to qualify as an associate), and be able to demonstrate "significant involvement in and contribution to the strategic management of their organization." In the alternative, an associate or affiliate of the organization can qualify as a fellow with a minimum of ten years practical experience at a senior and responsible level, with contributions to the strategic management of the organization.

A document titled "Fellowship of CIMA (FCMA) Guidelines for Associate Members wishing to apply for Fellowship" states that the senior experience must be in one or more of three categories: strategic leadership, operational/functional leadership, and technical leadership. The qualifying work to be performed in these categories generally includes leadership at the Board level, or achieving business objectives for or providing advice to those at the Board level. This also includes providing input to original strategic decisions which are adopted by the organization. In addition, what appears to be a presentation given to aspiring CIMA fellows indicates that fellowship "is awarded only when someone has appropriate experience," and that the status "should reflect tangible achievement."

Additional evidence regarding the Petitioner's CIMA membership was submitted in response to the Director's request for evidence (RFE), and includes a letter from an assistant professor at [redacted] University. The writer provides a summary of the requirements in the CIMA regulations and guidelines noted above, and then discusses the Petitioner's achievements with her current and previous employers. He then concludes that "the exceptional business nuance and financial acumen that [the Petitioner] exhibited in her career was recognized by the CIMA..." and led to her acceptance as a CIMA fellow. However, we note that the writer does not claim to have worked with the Petitioner, be a CIMA fellow himself or to have been involved in the review of any CIMA fellowship applications, let alone the Petitioner's application.

The Director found that the requirements included in the CIMA bylaws were professional achievements, but did not rise to the level of extraordinary achievements. He also indicated that requirements such as a minimum level of education or number of years of experience, such as those included in the CIMA bylaws, do not constitute outstanding achievements. On appeal, the Petitioner refers to the bylaws and the requirement of three years senior years of experience at a senior and responsible level, and specifically to the technical leadership section involving the development of thought leadership and provision of advice at or to the Board level. However, while we acknowledge that the requirement of having performed at the senior level of an organization, as well as providing evidence of "tangible achievement," is more specific and presents a higher threshold for membership than simply a minimum number of years of experience, the Petitioner has not demonstrated that having the "appropriate experience" is sufficient to show that such achievements are considered to be outstanding in the Petitioner's field. We note that examples of qualifying technical leadership provided in the presentation to fellow candidates include the development of new accounting or financial management processes, systems development resulting from changes in legislation, and new procedures and processes in specific technical areas. The Petitioner has not shown that such achievements, accomplished within the scope of one's job duties and limited to a single organization, would set an experienced accountant or finance business partner apart from her peers.

As to whether membership as a CIMA fellow is judged by recognized national or international experts, the evidence shows that candidates are interviewed by trained assessors who are already CIMA fellows, and that there are 105 of these assessors worldwide. The record also includes several biographies or interviews of senior executives of large corporations who are CIMA fellows, most of which appeared in CIMA publications or websites. However, the record does not indicate that these individuals are assessors or have been in the past, nor does it show that gaining CIMA fellowship leads to, or is indicative of, national or international recognition as an expert.

Regarding the Petitioner's membership in IFA as a fellow, which the evidence indicates also included fellow membership in the Institute of Public Accountants (IPA), the organization's webpage titled "Membership Grades" indicates that fellows "have been working in a senior role in the accountancy profession for no fewer than ten years, the last five at a senior level in accountancy." The IFA bylaws provide that, in addition to the senior experience requirement, a fellow candidate must hold a UK or overseas accountancy qualification approved by it, or be a member of another professional body.

In addition to the bylaws, the Petitioner submitted a letter from both the IFA and IPA. The CEO of the IPA Group indicates that "the Board has discretion to decide any extra qualifications we see fit for membership, and I can confirm that the board uses this discretion." However, as he does not provide any further details about what those extra qualifications may be, this statement does not show that IPA requires outstanding achievements of fellows. Another letter was submitted from the Education Manager of the IFA, who states that members seeking fellow status "must demonstrate continuing professional development and expertise, acknowledged leadership, impeccable judgment and unwavering integrity." But these requirements do not go beyond those stated in the bylaws, as an accountant working in a senior role for ten years would be expected to continue their professional development in order to reach that level and act as a leader.

On appeal, the Petitioner states that "the IFA certainly requires members to have a well-established financial, professional background as well as the qualifications of expertise." While we agree that the evidence shows that this organization requires its members at the fellow level to be experienced professionals who have acquired a certain level of expertise, we do not find that those requirements include outstanding achievements. In addition, although the bylaws indicate that membership decisions "may be delegated to the Chief Executive Officer by the Board," it is not apparent whether this refers to individual membership decisions or those relating to membership rules and policies. This evidence does not therefore establish that recognized national or international experts judge the merits of applications for IFA fellowship.

For all of the reasons given above, we find that neither CIMA nor the IFA require outstanding achievements of their members at the fellow level, nor has it been established that applications for fellow status in these organizations is judged by recognized national or international experts in their fields. Accordingly, the Petitioner has not established that she 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 specialization for which classification is sought. 8 C.F.R. § 204.5(h)(3)(iv)

The Petitioner submitted evidence which establishes that she served as a judge for the 2018 iGaming Idol awards in the [redacted] category, as an expert panelist (but not a head judge) who participated in determining the short list for the 2019 Partnership Awards, and as a judge for the 2019 Stevie Awards. We therefore agree with the Director and find that she meets 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)

To show that a petitioner meets this criterion, the evidence must establish that the role he or she performed in an organization was either leading or critical for the organization as a whole. A leading role should be apparent by its position in the overall organizational hierarchy and through the role's matching duties. A critical role should be apparent from the Petitioner's impact on the organization or the establishment's activities.

A reference letter from [redacted] of the Natural Environmental Research Council (NERC) of the [redacted] describes the Petitioner's role in several projects. In particular, he states that the Petitioner's work on the [redacted] Project, which investigated whether research centers should operate independently of the NERC and the financial impact of such a change, [redacted] notes that both he and the Chairman of NERC relied upon the Petitioner's analysis in making this decision, and that it was presented at a [redacted] committee hearing regarding the [redacted] Project. As a result of this work, she was nominated for a department-level award. He also indicates that her assignment to various entities within NERC as a trouble-shooter, including to the [redacted] to develop new financial processes and controls, were a sign of her criticality to the organization.

In addition, evidence was also submitted regarding the reputation of NERC as [redacted]'s leading public agency providing funding for environmental science. Accordingly, we agree with the Director that the Petitioner meets 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. 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 her 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 that she 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 her eligibility as an individual of extraordinary ability. 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.