U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 11198670

Date: FEB. 26, 2021

Appeal of Texas Service Center Decision

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

The Petitioner, a business development specialist, 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 although the Petitioner satisfied four of the initial evidentiary criteria, the Petitioner did not establish his intent to continue to work in his area of extraordinary ability in the United States and that his entry would substantially benefit prospectively the United States.

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)(A) 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 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).

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). This two-step analysis is consistent with our holding that the "truth is to be determined not by the quantity of evidence alone but by its quality," as well as the principle that we examine "each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true." *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

II. ANALYSIS

The Petitioner indicates employment as vice president and general manager at [redacted] and vice president at [redacted]

A. Background

Because the Petitioner has not claimed 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). Under his "Analysis of Criteria" in his decision, the Director determined that the Petitioner met four of the claimed evidentiary criteria relating to published material at 8 C.F.R. § 204.5(h)(3)(iii), judging at 8 C.F.R. § 204.5(h)(3)(iv), 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).

While the Director briefly stated under his "Final Merits Determination" that "[t]he petitioner provided evidence to indicate the beneficiary's high-level experience with [redacted] and [redacted]' the record does not show that the Petitioner garnered sustained national or international acclaim and that his achievements have been recognized in the field of expertise through extensive documentation, demonstrating that he is one of that small percentage who has risen to the very top of the field.[1] Instead, the Director focused on the Petitioner's intent to continue to work in his area of expertise in the United States and whether he would substantially benefit prospectively the United States. In

[1] *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* 13 (Dec. 22, 2010), https://www.uscis.gov/policymanual/HTML/PolicyManual.html (providing that objectively meeting the regulatory criteria in part one alone does not establish that an individual meets the requirements for classification as an individual of extraordinary ability under section 203(b)(1)(A) of the Act).

addition, the Director did not explain how having "high-level experience" establishes sustained national or international acclaim and recognition of his achievements in the field, consistent with this highly restrictive classification.

On appeal, we will evaluate the totality of the evidence in the context of the final merits determination below to decide whether the Petitioner demonstrated eligibility as an alien of extraordinary ability under section 203(b)(1)(A)(i) of the Act. If the Petitioner shows his extraordinary ability in business, then we will determine whether the Petitioner established that he will continue to work in his area of extraordinary ability in the United States under section 203(b)(1)(A)(ii) of the Act and whether he will substantially benefit prospectively the United States under section 203(b)(1)(A)(iii) of the Act.

B. Final Merits Determination

As the Petitioner submitted the requisite initial evidence, we will evaluate whether he has demonstrated, by a preponderance of the evidence, his sustained national or international acclaim,[2] that he is one of the small percentage at the very top of the field of endeavor, and that his achievements have been recognized in the field through extensive documentation. In a final merits determination, we analyze a petitioner's accomplishments and weigh the totality of the evidence to determine if his successes are sufficient to demonstrate that he has extraordinary ability in the field of endeavor. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20.[3] In this matter, we determine that the Petitioner has not shown his eligibility.

According to his initial cover letter, the Petitioner "holds a degree in Economy Management and a degree in Computer Application Software from the University [redacted]," and "is a graduate of [redacted] their Advanced Management Program."[4] In the past 25 years, the Petitioner has been employed at various companies, such as [redacted] (senior consultant and consultant manager), [redacted] (senior manager), [redacted] (director), [redacted] (associate partner, partner, and managing partner), [redacted] (chief executive officer), [redacted] (president and strategic consultant), [redacted] (global vice president), [redacted] (vice president and managing partner), [redacted] (president) [redacted] (senior vice president), and [redacted] (vice president and general manager of service).[5] As indicated above, the Director determined that the Petitioner received some press coverage, participated as a judge, performed in leading roles, and earned a high salary. The record, however, does not demonstrate that

[2] *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 14 (stating that such acclaim must be maintained and providing *Black's Law Dictionary's* definition of "sustain" as to support or maintain, especially over a long period of time, and to persist in making an effort over a long period of time).

[3] *Id.* at 4 (instructing that USCIS officers should then evaluate the evidence together when considering the petition in its entirety to determine if the petitioner has established by a preponderance of the evidence the required high level of expertise of the immigrant classification).

[4] The Petitioner did not provide evidence of his degrees to support his claims.

[5] *See* "Job History Summary" prepared by the Petitioner and a screenshot from bloomberg.com entitled, "Executive Profile & Biography."

his personal and professional achievements rise to a level of "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990).

As it relates to media coverage, the Petitioner offered two items reflecting published material about him in 2011 and 2012. However, the Petitioner did not demonstrate that such minimal press coverage, without any media reporting about him since 2012, is consistent with the sustained national or international acclaim necessary for this highly restrictive classification. *See* section 203(b)(1)(A) of the Act. Although he offered an additional six articles where he is mentioned as being one of the attendees at meetings, quoted on various business topics, and interviewed as a spokesperson of companies, the Petitioner did not show how his overall media coverage is indicative of a level of success with being among that small percentage who has risen to the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2). Thus, the Petitioner did not establish that the limited media reporting of 8 articles in a 15-year span reflects a career of acclaimed work in the field or a very high standard to present more extensive documentation than that required. *See* H.R. Rep. No. 101-723 at 59 and 56 Fed. Reg. at 30703, 30704 (July 5, 1991).

Regarding the Petitioner's service as a judge of the work of others, an evaluation of the significance of his experience is appropriate to determine if such evidence indicates the required extraordinary ability for this highly restrictive classification. *See Kazarian*, 596 F. 3d at 1121-22.[6] The record reflects that the Petitioner participated as a judge for the 2011 [redacted] Research Award and the 2018 [redacted] Analysis Report. However, the Petitioner did not establish that these two occasions, seven years apart, contribute to a finding that he has a career of acclaimed work in the field or indicative of the required sustained national or international acclaim. *See* H.R. Rep. No. 101-723 at 59 and section 203(b)(1)(A) of the Act. He did not show, for example, how his experience judging these two contests compares to others at the very top of the field. The Petitioner did not establish that he garnered wide attention from the field based on his judging activities. While he provided some media accounts announcing the upcoming events, the Petitioner did not demonstrate the prestigious nature of the occasions or that he garnered any acclaim from these judging instances.

Serving as a member of a jury does not automatically demonstrate that an individual has extraordinary ability and sustained national or international acclaim at the very top of his field. *Cf., Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994) (USCIS has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard). Without evidence that sets him apart from others in his field, such as evidence that he has a consistent history of reviewing or judging recognized, acclaimed experts in his field, the Petitioner has not shown that his judging experience places him among that upper echelon of his field and that small percentage who has risen to the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2) and 56 Fed. Reg. at 30704.

[6] *See also* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 13 (stating that an individual's participation should be evaluated to determine whether it was indicative of being one of that small percentage who have risen to the very top of the field of endeavor and enjoying sustained national or international acclaim).

As it pertains to his roles, as mentioned above, the Petitioner served in various executive capacities for several companies for the past 25 years. However, the Petitioner presented documentation relating to his roles for only three businesses – [redacted], [redacted] and [redacted]. The record lacks evidence documenting his professional career with the other companies, nor does it demonstrate whether his employment resulted in attention or recognition from the field, reflecting a career of acclaimed work in the field or a very high standard to present more extensive documentation than that required. *See* H.R. Rep. No. 101-723 at 59 and 56 Fed. Reg. at 30704.

While he submitted job confirmation letters, none of them indicate any of the Petitioner's national or international acclaim based on his professional achievements at the companies. For instance, [redacted] former general manager at [redacted] claimed that the Petitioner's role in "revenues and headcount . . . was more widely recognized within [redacted]' than by the overall field. Further, [redacted] COO at [redacted] stated that the Petitioner "has valiantly led our team to victory surpassing our business target for 8 consecutive quarters" but did not explain how the greater field recognized his accomplishments. Similarly, the record reflects that the Petitioner provided evidence of his receipt of the "FY17 [redacted] Gold Club award" for "extraordinary performance, transformation and contributions toward achieving key company objectives"; however, the Petitioner did not show any acknowledgment of the award by the field outside of the company. In addition, [redacted] chairman and CEO of [redacted], indicated that he "appreciated [the Petitioner's] selfless contribution to help our team in the transformation, win in the market strongly, and think differently about the competition and ways of success" without demonstrating how the Petitioner's personal and professional traits resulted in broad national or international attention.

The letters do not discuss whether any of the Petitioner's professional achievements at the businesses garnered him national or international acclaim. *See* section 203(b)(1)(A) of the Act. Further, the letters do not show the Petitioner's recognition on a national or international scale, consistent with being among that small percentage at the very top of the field. *See* 8 C.F.R.§ 204.5(h)(2). Here, the Petitioner did not establish how his roles resulted in widespread acclaim from his field, that he drew significant attention from the greater field, or that overall field considers him to be at the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2) and 56 Fed. Reg. at 30704.

Finally, although he documented his income from [redacted], [redacted], and [redacted], the Petitioner did not establish that he commanded earnings commensurate with sustained national or international acclaim. *See* section 203(b)(1)(A) of the Act. The Petitioner did not show that his wages are tantamount to an individual who is among that small percentage at the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2). He did not demonstrate, for example, how his salary compared to others at the very top of his field, or that he received notoriety or attention based on his earnings separating himself from others in the field or placing him in the upper echelon.

The record as a whole, including the evidence discussed above, does not establish the Petitioner's eligibility for the benefit sought. Here, the Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than those progressing toward the top. Even major league level athletes do not automatically meet the statutory standards for classification as an individual of "extraordinary ability." *Price*, 20 I&N Dec. at 954. While the Petitioner need not establish that there is no one more accomplished to qualify for the classification sought, the record is insufficient to demonstrate that he has sustained national or international acclaim

and is among the small percentage at the top of his field. *See* section 203(b)(1)(A)(i) of the Act and 8 C.F.R. § 204.5(h)(2).

III. CONCLUSION

For the reasons discussed above, the Petitioner has not demonstrated his eligibility as an individual of extraordinary ability.[7] 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.

[7] As the Petitioner has not established his extraordinary ability under section 203(b)(1)(A)(i) of the Act, we need not consider whether he will continue to work in his area of extraordinary ability under section 203(b)(1)(A)(ii) of the Act and whether his entrance will substantially benefit prospectively the United States under section 203(b)(1)(A)(iii) of the Act. Accordingly, we reserve these issues. *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, n.7 (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).