U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 10767610

Date: MAY 26, 2021

Appeal of Nebraska Service Center Decision

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

The Petitioner, an engineer, 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 received a one-time major award or that he met any of the alternate regulatory criteria, of which he must meet at least three.

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
>
> (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 an [redacted] engineer who previously was employed with [redacted] and [redacted]. The record reflects that he holds a master of science in [redacted] engineering from the [redacted] and a master of business administration from [redacted] University.

A. Evidentiary Criteria

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 Director found that the Petitioner had not met any of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). On appeal, the Petitioner asserts that he meets the evidentiary criteria relating to published material, judging, original contributions, scholarly articles, artistic display, and leading or critical role at 8 C.F.R. § 204.5(h)(3)(iii), (iv), (v), (vi), (vii), and (viii), respectively. After reviewing all of the evidence in the record, we find that the Petitioner does not satisfy at least three of these criterion, as required.

> *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)

On appeal, the Petitioner again claims his eligibility for this criterion through numerous articles already in the record. First, he asserts that a *Bimco Bulletin* article satisfies this criterion because it features an in-depth discussion about a new [redacted] system that he developed for [redacted]. However, the record does not contain evidence sufficient, by the preponderance of the evidence, to corroborate the Petitioner's assertion that he developed this system, and that the article is about him and his work for [redacted]. As the Petitioner acknowledges on appeal, this article does not reference the Petitioner by name, nor it does discuss the Petitioner's contributions to the development of [redacted]'s [redacted] system. Instead, another document from [redacted] in the record notes the

Petitioner's role as a project manager in ensuring that "the project was successfully delivered with low-maintenance costs" among others but does not attribute development to the Petitioner. The Petitioner does not offer evidence explaining how the delivery of these systems equates to his development of them, as asserted. Further, a letter from [redacted]'s chief executive officer, referenced by the Petitioner in the appellate brief, praises the Petitioner's "technical and functional gifts" and notes that these gifts play a "key role in [redacted]'s research and development efforts." However, [redacted] does not further describe how the Petitioner played a 'key role' or identify these efforts, and does not establish that the Petitioner developed the [redacted] system. In order to satisfy this criterion, the published material should be about the petitioner, relating to his work in the field, not just about his or her employer or another organization that he or she is associated with.[1] As this article is about his former employer, and absent evidence sufficient to corroborate the Petitioner's assertion that he led the development of the [redacted] system referenced in the article, this document does not satisfy the criterion.

Next, the Petitioner argues that a *U.S. Coast Guard Forum* article, about [redacted]'s work with the U.S. Coast Guard to have a [redacted] regulation issued and how [redacted] benefited from this rule, satisfies this criterion. In the appellate brief, the Petitioner asserts that [redacted] benefited because the company is "one of very few companies, thanks to [the Petitioner], who is able to sell this type of technology." He therefore argues that this article is about him related to his work. As discussed above, the record lacks evidence sufficient to establish that the Petitioner is directly responsible for the development of [redacted] systems for [redacted]. The record further lacks evidence establishing the Petitioner's role in the publication of this rule or [redacted]'s ability to sell this technology. In order to satisfy this criterion, the published material should be about the petitioner, relating to his work in the field, not just about his or her employer or another organization that he or she is associated with.[2] Here the Petitioner has not submitted evidence sufficient to corroborate his assertion that he is directly responsible for [redacted]'s ability to sell its [redacted] system, and that this article is about him rather than his employer. Accordingly he has not shown that this article meets this criterion.

In addition, the Petitioner refers to a [redacted] *Florida Tech TODAY* article as evidence of his eligibility. This article, [redacted]' is a discussion with [redacted] a professor of [redacted] engineering at [redacted] about his work testing and evaluating [redacted] coatings. Although the article includes a photograph of the Petitioner with the professor, the article does not discuss the Petitioner's work in the field and it is not about the Petitioner. Articles that do not pertain to a petitioner do not meet this regulatory criterion. *See, e.g., Negro-Plumpe v. Okin,* 2:07-CV-820-ECR-RJJ at *1, *7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles regarding a show are not about the actor).

The Petitioner also asserts on appeal that "he was the subject of multiple articles published by *Foreign Policy* and *ABC7!News* [*sic*]." The record includes an article published in *Foreign Policy* and is about the Petitioner related to his work. However, this criterion requires not only that the published material be about the Petitioner and related to his work but also that it be in a professional or major trade publication or other major media. Here the Petitioner does not provide evidence, such as on-line

[1] *See* 6 *USCIS Policy Manual* F.2(B)(2), Appendix: Extraordinary Ability Petitions – First Step of Reviewing Evidence, https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-2.
[2] *Id.*

circulation statistics or other relevant data, for *Foreign Policy* to show that its circulation is high relative to others, or information about this publication, to show that it is a professional or major trade publication, or other major media, as required.[3]

The *ABC7 News* document referenced by the Petitioner also is about him and related to his work. However, the Petitioner also provided a printout from www.abcnewswire.com indicating that this article is a press release published by [redacted] a company owned by the Petitioner according to registration documents in the record. This press release directs readers to [redacted] a website with the Petitioner's phone number, the text [redacted] and a button reading "Book an Appointment."[4] Therefore, it appears that this evidence is designed to promote the Petitioner's services. Marketing materials created for the purpose of selling the petitioner's products or promoting his or her services are not generally considered to be published material about them.[5] Even if we view this document in the most favorable light, the Petitioner does not provide information about or on-line circulation statistics for *ABC7 News* to show that its circulation is high relative to others, demonstrating that it is a professional or major trade publication or other major media as required.[6]

Finally, the Petitioner states that he was "interviewed by Warlock Asylum International News which published a full featured interview and Q&A" about him and his expertise. The record reflects that this interview was published in November 2019. The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1). Here, the instant petition was filed in March 2019. As this material was published after the filing date, it does not establish the Petitioner's eligibility for 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)

On appeal, the Petitioner reasserts eligibility for this criterion as he "regularly reviews the work of his peers and the employees he oversees" and notes that "[c]opies of employee reviews and training provided by [the Petitioner] as well as work product reviews are enclosed." Upon review, we note that the record does not contain employee reviews. The record includes a [redacted] PowerPoint slide deck attributed to the Petitioner entitled [redacted] but the Petitioner does not provide the duties he performed as a trainer or offer other evidence establishing that this training equates to his participation as a judge of the work of others his field.

The record also contains several photographs of the Petitioner inspecting equipment or in front of vessels with captions such as "Judging their work and teaching them the professional regulatory methods," and "Judging the work and training them with the new regulatory materials." Repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), aff'd, 905 F. 2d 41 (2d. Cir. 1990); *Avyr*

[3] *See* 6 *USCIS Policy Manual* F.2(B)(2), https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-2.
[4] *See* [redacted] last visited May 26, 2021) and incorporated into the record by reference.
[5] *See* 6 *USCIS Policy Manual* F.2(B)(2), https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-2.
[6] *Id.*

Associates, Inc. v. Meissner, 1997 WL 188942 at *5 (S.D.N.Y.). The Petitioner does not identify whose work he is judging, list the duties he performed as a judge, or offer evidence allowing us to determine if the actions shown in these photographs satisfy this criterion. Without this information, these photographs are not sufficient to show that he meets this criterion.

The record also includes certificates of compliance and invoices signed by the Petitioner as project manager, a copy of a technical agreement bearing his signature, and a PowerPoint presentation authored by the Petitioner in his capacity as a project manager for [redacted] The PowerPoint presentation explains that as a project manager, the Petitioner "contacted vendors," "negotiated the pricing and selected the vendors who can complete international shipping," and has "successfully completed many equipment installations." However, the Petitioner does not submit evidence showing how these actions equate to the participation as a judge of the work of others in his field. Further, as noted by the Director in his decision, the phrase "a judge" implies a formal designation in a judging capacity, either on a panel or individually as specified at 8 C.F.R. § 204.5(h)(3)(iv). The Petitioner does not submit evidence indicating that his employer designated him "as a judge" in his capacity as a project manager or otherwise establishing that his role as such is consistent with this regulatory criterion. Without further documentation, this evidence is insufficient to meet this criterion.

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 regulation at 8 C.F.R. § 204.5(h)(3)(vi) requires the Petitioner's "authorship of scholarly articles in the field, in professional or major trade publications or other major media."[7] The Petitioner asserts eligibility for this criterion based on his authorship of the book entitled, [redacted] and published by [redacted] in 2008, and through the publication of '[redacted][8] Although the Petitioner does not identify this evidence by title, we note that in his decision the Director indicated that the Petitioner previously submitted four books entitled [redacted] and [redacted] to demonstrate his eligibility for this criterion.

Here, the Petitioner did not demonstrate how authorship of these books qualify as scholarly articles in professional or major trade publications or other major media consistent with this regulatory criterion. As books may be published independently or self-published, mere publication does not establish that a book is a professional or major trade publication or other major media. Moreover, scholarly articles should be written for "learned" persons in the field. "Learned" is defined as having or demonstrating profound knowledge or scholarship. Learned persons include all persons having profound knowledge of a field.[9] However, the Petitioner does not offer evidence showing that these books were written for "learned" individuals and contain the characteristics of a scholarly article.

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[7] *See* 6 *USCIS Policy Manual* F.2(B)(2), Appendix: Extraordinary Ability Petitions – First Step of Reviewing Evidence, https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-2.

[8] We note that the Petitioner also claims that "two other papers published in [redacted] and [redacted]," satisfy this criterion but does not indicate where in the record these papers are found, or otherwise identify them. Accordingly we do not address whether they meet this criterion.

[9] *See* 6 *USCIS Policy Manual* F.2(B)(2), Appendix: Extraordinary Ability Petitions – First Step of Reviewing Evidence, https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-2.

Even if the Petitioner's books equate to scholarly articles, he did not submit any documentary evidence to establish that these books are professional or major trade publications or other major media. He did not, for instance, provide statistics or other evidence establishing the major standing of these books.[10]

In addition the Petitioner claims this work "led to further publications such as Market Watch: The Wall Street Journal, Yahoo! News The Ritz Herald, Daily Country News, Foreign Policy and many more." With regard to the *Foreign Policy* article, as we note above, the record lacks evidence demonstrating that it is a professional publication, major trade publication, or other major media. Pertaining to the remainder of the publications identified by the Petitioner on appeal, we note that these articles appeared in these publications in October and November 2019. However, the Petitioner filed the instant petition in March 2019. The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1). Documentation published after the filing date is not sufficient to satisfy this criterion.

The Petitioner, therefore, has not provided documentation sufficient to meet this criterion.

> *Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.* 8 C.F.R. § 204.5(h)(3)(vii)

The Petitioner also claims eligibility for this criterion through his presentations at scholarly exhibitions. He argues that his presentations are comparable to a display of work at artistic exhibition, and therefore evidence establishing that he has presented at such scholarly exhibitions should be "admissible to satisfy the 'display' criterion under the 'comparable evidence' regulation."

The regulation at 8 C.F.R. § 204.5(h)(4) allows for comparable evidence if the listed criteria do not readily apply to the petitioner's occupation. 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). Here, the Petitioner has not shown why he cannot offer evidence that meets at least three of the criteria. General assertions that any of the ten objective criteria do not readily apply to an occupation are not probative and should be discounted. The fact that the Petitioner did not submit documentation that he fulfills at least three is not evidence that an engineer could not do so. For these reasons, the Petitioner did not show that he fulfills this criterion through the submission of comparable evidence.

As discussed above, we find that the Petitioner does not meet the four criteria relating to published material, judging, scholarly articles, and artistic display. Although he claims to meet two additional criteria on appeal, relating to contributions of major significance and to performance of a leading or

[10] *See* 6 *USCIS Policy Manual* F.2(B)(2), Appendix: Extraordinary Ability Petitions – First Step of Reviewing Evidence, https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-2, (providing that evidence of professional or major trade publications or in other major media publications should establish that the circulation (on-line or in print) is high compared to other circulation statistics and the intended audience).

critical role, we need not reach these additional issues. As the Petitioner cannot meet the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3), we reserve these issues.[11]

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 has not shown that the significance of his 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 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).

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

ORDER: The appeal is dismissed.

[11] *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).