U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20844331

Date: AUG. 04, 2022

Appeal of Nebraska Service Center Decision

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

The Petitioner, a [redacted] engineer and technical director, seeks classification as an individual 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 the Petitioner's receipt of a major, internationally recognized award, or demonstrate, in the alternative, that he satisfied at least three of the ten initial evidentiary criteria at 8 C.F.R. § 204.5(h)(3). The matter is now before us on appeal.

We review the questions in this matter de novo. *See Matter of Christo's Inc*., 26 I&N Dec. 537, 537 n.2 (AAO 2015). In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361, *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). 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 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) (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 sound engineer and technical director who has worked on studio-recorded and live broadcasts in the [redacted] industry since 2009. At the time of filing, the Petitioner indicated his intent to establish a company to provide sound engineering services for the [redacted] industry and other [redacted] projects and events in the United States.[1]

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). On appeal, the Petitioner asserts that he meets the following criteria:[2]

- (iv), Participation as a judge of the work of others in the field;
- (v), Original contributions of major significance;
- (viii), Leading or critical role for distinguished organizations or establishments; and
- (ix), High salary or other significantly high remuneration for services.

[1] On appeal, the Petitioner provides evidence that he registered a sole proprietorship business [redacted] in California in 2021.

[2] The Director observed that the Petitioner initially claimed to meet the criterion at 8 C.F.R. § 204.5(h)(3)(i), which requires evidence of his receipt of nationally or internationally recognized awards for excellence. As noted in the Director's decision, the Petitioner withdrew that claim when responding to a request for evidence; the Petitioner does not mention this criterion on appeal. In addition, the Director determined that the Petitioner claimed, but did not establish, that he could satisfy the criterion at 8 C.F.R. § 204.5(h)(3)(vii), which requires evidence of the display of an individual's work at artistic exhibitions or showcases. On appeal, although the Petitioner generally asserts that he "renews his arguments," he does not mention this criterion or contest the Director's decision that he did not meet it based on the previously submitted evidence. Therefore, we deem these issues to be waived and will not address these two criteria in our decision. *See, e.g., Matter of M-A-S-*, 24 I&N Dec. 762, 767 n.2 (BIA 2009).

> *Evidence of the individual's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.* 8 C.F.R. § 204.5(h)(3)(iv).

To meet this criterion, the Petitioner must show that he has not only been invited to judge the work of others, but also that he actually participated in the judging of the work of others in the same or allied field of specialization.[3]

The Petitioner's initial evidence included a letter from [redacted] who states he is a professor of sound engineering at the [redacted] Institute of Television and Radio, and a senior sound director with [redacted] and [redacted] [redacted] states that he invited the Petitioner "several times to be a guest expert/judge for the Examination Commission in Sound Engineering at our university where [he] helped identify and examine graduating students on their knowledge and skills upon the final exam."

The Petitioner also submitted a letter dated July 18, 2019, from [redacted] faculty dean of the Higher School of [redacted] at [redacted] University named after [redacted] [redacted] "verifies that [the Petitioner] was a member of the jury of the examination commission." He indicates that the Petitioner was invited as an independent expert based on his experience as a sound director, and that he evaluated short-film projects for graduates. He further notes that each jury member "was representing a separate area of the filmmaking, such as work of operator, screen writing, acting skills and, of course, sound." Finally, [redacted] states that the Petitioner provided a detailed and precise "criticism and analysis of sound component of each project" which "allowed more distinctly grade the works [*sic*]"

In a request for evidence (RFE), the Director discussed these letters, noting that the letter from [redacted] was not corroborated by evidence of the Petitioner's judging activities, lacked details about the specific dates of service, and did not identify whose work was judged or whether such work was in his field or an allied field. Similarly, the Director determined that the letter from [redacted] did not establish the dates on which the Petitioner served as a jury member and was not supported by contemporaneous materials documenting his service or showing that he examined work in the sound engineering field. The Director allowed the Petitioner an opportunity to provide additional evidence in support of the criterion and advised that he should provide contemporaneous evidence that documents the event or occasion, the date of the event or occasion, and the work that was judged. Finally, the Director determined that the submitted translations of [redacted] documents were not accompanied by translations that fully complied with the regulation at 8 C.F.R. § 103.2(b)(3).[4]

In response to the RFE the Petitioner submitted a printout of an email containing "Instructions for the Examination Commission." The sender of the message is identified only as [redacted] and the recipient is [redacted] The email indicates that the "summer examination commission" of [redacted] for second, third and fourth-year bachelor's degree students would take place

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[3] *See* 6 *USCIS Policy Manual* F.2 appendix, https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-2.

[4] That provision 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."

on designated dates in May and June 2019, provides room numbers, and indicates that a detailed schedule of the examination schedule would be sent to all members of the examination commission by April 30, 2019. It also indicates that invited members should advise the Dean's office in advance if they cannot participate.

The Director acknowledged receipt of this additional evidence but noted that the submitted email is not sufficient to demonstrate that the Petitioner served as a judge or that the referenced "examination commission" was required to judge the work of those in the sound engineering or a related field. The Director also determined that the Petitioner had not overcome deficiencies with respect to the submitted English translations of [redacted] documents.

On appeal, the Petitioner maintains that "the letter by [redacted] satisfies the standard for this proceeding and it should be considered for its full value." The Petitioner acknowledges that the Director determined that the letter lacked sufficient detail but argues this conclusion did not amount to a "proper analysis" of the evidence submitted. Finally, the Petitioner maintains that the previously provided translations complied with 8 C.F.R. § 103.2(b)(3).

We agree with the Petitioner that the translations that accompanied the [redacted] evidence were sufficient to meet the requirements of 8 C.F.R. § 103.2(b)(3). Nevertheless, we agree with the Director's determination that this criterion has not been satisfied. The Petitioner specifically asserts that the letter from [redacted] adequately documented his prior participation as a judge of the work of others in the same or allied field. As noted, [redacted] indicates that he invited the Petitioner to be a "guest expert/judge for the Examination Commission in Sound Engineering at our university," and indicates that he "helped identify and examine graduating students on their knowledge and skills upon their final exam." Although [redacted] indicates that the Petitioner judged or helped examine graduating students in the field of sound engineering at the institution where he works, he does not provide specifics such as the dates of these examinations or the nature and type of authority or influence granted to guest experts/judges. For example, it is unclear whether such guest experts were responsible for determining whether a given student passed the exam or were otherwise involved in calculating grades or determining student outcomes. Therefore, we agree with the Director that this letter alone is insufficient to demonstrate that the Petitioner participated in qualifying judging activities as a member of an examination commission at the [redacted] Institute of Television and Radio.

The letter from [redacted] indicates that the Petitioner, as a member of the jury at an examination commission held at "the [redacted] named after [redacted] evaluated sound engineering aspects of graduate film projects and provided "criticism and analysis" which facilitated the grading of such projects. He does not indicate how the examination commission was structured or what procedures were used to determine student grades and outcomes. Further, because the letter did not include dates, it did not sufficiently document a specific instance in which the Petitioner participated as a jury member.

Finally, the e-mail containing "instructions for the members of the examination commission" was not clearly addressed to the Petitioner and refers to an examination commission at [redacted] Neither [redacted] nor [redacted] state that they are affiliated with [redacted] and the email alone is insufficient to establish that the Petitioner participated as a judge at an examination commission held

at [redacted] Further the email only indicates that the commission would be examining second, third- and fourth-year Bachelor's degree students; it does not identify their field of study and therefore cannot substantiate that the Petitioner participated as a judge of students in the field of sound engineering or an allied field of specialization.

For the reasons discussed, the record does not establish that the Petitioner satisfies this criterion.

> *Evidence of the individual'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)

To meet the regulation at 8 C.F.R. § 204.5(h)(3)(v), a petitioner must establish that he has made original contributions of major significance in the field.[5] For example, a petitioner may show that the 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. Here, we will address the Petitioner's arguments on appeal and determine whether he has demonstrated original contributions of major significance in the field consistent with this regulatory criterion.

The Director acknowledged that the Petitioner submitted letters from professors and sound engineering professionals, as well as letters from actors and clients who attested to his skills, talents, professionalism, his status in the field, and his possession of an uncommon ability known as a [redacted] which allows him to deliver optimum sound quality with minimal need for post-production sound editing. The Director determined that while this evidence establishes that the Petitioner's skills are highly valued, in demand, and have benefited his employers, the record did not show how his innate skills amount to an "original contribution" that has impacted the work of other sound engineers in the field or otherwise had an influence that extended beyond his employers.

The Director further noted that some of the submitted letters attested to his introduction of new methods in sound engineering, specifically, a [redacted] technique. However, the Director noted that the record did not contain objective evidence that this technique was attributed to the Petitioner, as it did not contain patents, licenses or other objective materials crediting him with the development and use of the technique.[6]

On appeal, the Petitioner emphasizes that he submitted letters from [redacted], [redacted], and others that "referred to [his] trained talent for sound with his unique physical ability known as [redacted]" and which "confirmed [his] use of [redacted] technique." As noted, the Director acknowledged receipt of the referenced letters, evaluated the statements made by academics and professionals in the field, and determined that the Petitioner did not meet his burden to establish that he had made an original contribution of major significance in the sound engineering field by virtue of having a [redacted] or based on his use of the [redacted] technique. The Petitioner does not contest the Director's specific reasons for finding the submitted letters and other evidence

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[5] *See* 6 *USCIS Policy Manual*, *supra*, at F.2 appendix.

[6] The Director's RFE addressed this criterion and advised the Petitioner that he could submit evidence such as contracts with companies that are using his technique or technologies or other evidence that he developed licensed or patented technologies or methodologies used by a significant number of others. The Petitioner's response to the RFE did not include any additional evidence in support of this criterion.

insufficient to demonstrate the nature and significance of his contributions to the field. Instead, he simply maintains that his arguments were persuasive and should be reviewed.

With respect to the recognition the Petitioner has received for his [redacted] we agree with the Director's determination that the letters did not demonstrate how his natural talent and training have resulted in an original contribution of major significance to the field of sound engineering. We do not doubt that such talents have enabled him to be quite successful in the broadcasting industry and have been valuable to the networks and studios that have employed him. For example,[7] [redacted] a Member of the [redacted] and Sound Engineer for the [redacted]' indicates that the Petitioner worked with him on projects for [redacted] and that he later invited him to work on projects at [redacted] including the [redacted] [redacted] explains that a live television broadcast requires a sound engineer "who can detect and eliminate any problems with the sound equipment as fast as possible" and that the Petitioner "was extremely useful in these tasks." He also comments on the Petitioner's "extensive knowledge and experience" in their shared field and offers praise for the clarity and accuracy of the Petitioner's recordings, which he attributes to his [redacted] [redacted] states that "it is not enough to have an education, experience and extensive training in our field to have this phenomenon, but also one must be born with it."

The letter from [redacted] also comments on the Petitioner's talents and the high quality of his work. He states that the Petitioner has a rare [redacted] that allows him to "detect subtle differences in audio reproduction that most people cannot" and that "this ability is vital not only for live broadcasting but also extremely important for the recordings" as it minimizes the time needed for editing when uniting sound with video. He also praises the Petitioner's "high professionalism and his capability getting alon[g] with team members as well as famous guest celebrities, who are often known for their capricious personalities." [redacted] further emphasizes the Petitioner's "ability to think unconventionally when it gets to use sound equipment" and notes that "his experimental approach" is what "makes him what he is." However, he does not elaborate on a specific approach that has been adopted by others or that would be considered widely influential or impactful in the sound engineering field.

While these and other letters attest to the Petitioner's innate talent and considerable experience in his field, his professionalism, and his status in the field as sought-after sound engineer, they do not identify how he has made an original contribution of major significance.

A second letter from [redacted] written in his capacity as senior head of the sound department for [redacted] sports network [redacted] describes how the Petitioner was "the first person [redacted] [redacted] to improve the quality of sound" for [redacted] broadcasts, and indicates that such [redacted] technology had not been used before in [redacted] As noted by the Director, the Petitioner did not offer additional evidence to establish that he was the originator of this technique or technology, or that his technique had an impact on the field that extended beyond his employer.

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[7] While we do not discuss all of the submitted reference letters here, we have reviewed each one in evaluating whether the Petitioner established that he meets this criterion.

On appeal, the Petitioner submits additional evidence related to the [redacted] technique. Specifically, he provides a licensing contract between himself and [redacted] which identifies him as the owner of "patent [redacted] issued on 09/21/2020 for [redacted] The agreement is dated November 25, 2020. We note that this type of evidence was specifically requested in the RFE issued in March 2021; however, the Petitioner did not provide evidence relating to the patent or licensing agreement in his response. Where, as here, a Petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988).

Further, while a patent may demonstrate the originality of the Petitioner's [redacted] technique, the evidence does not support a determination that this technique had been widely licensed or commercialized such that it was demonstrated to have had a significant influence or impact on his field as of the date of filing. There is no evidence that the Petitioner held this or any other patent when the petition was filed in August 2020. While he has now demonstrated that at least one company requested a license to use the patented technology, 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).

Overall, the letters do not contain detailed, probative information that identify the Petitioner's contributions and explain their major significance in the field. Having a diverse, unique, or special skill set is not a contribution of major significance in-and-of-itself. Rather, the record must be supported by evidence that the Petitioner has already used those skills and abilities to impact the field at a significant level, which he has not shown.

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 that the individual 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)

To satisfy the requirements of this criterion, the Petitioner must establish that his salary, or total remuneration, is high or significantly high, respectively, based on a comparison with others in his field in similar positions and geographic locations.[8] In support of this criterion, the Petitioner initially submitted:

- A "Contract Verification Letter" from [redacted] indicating that he was contracted with this [redacted] company as a part-time Sound Engineer/Technical Director from February 2016 to September 2019 with a salary of [redacted] 150,000 per month.
- A "Contract Verification Letter" from [redacted] indicating that he was contracted as a full-time sound engineer/technical director from April 2009 until September 2019 with a salary of [redacted] 260,000 per month, plus a quarterly bonus.

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[8] *See* 6 *USCIS Policy Manual*, *supra*, at F.2 appendix (noting that it is the petitioner's burden to provide geographical and position-appropriate evidence to establish that a salary is relatively high).

- Printouts from www.averagesalarysurvey.com providing the average salary for an "engineer" in [redacted] based on data obtained from visitors to the website. The survey indicates an average salary (nationwide) as [redacted] 1.7 million and the average salary in [redacted] as [redacted] 2,781,666.

In the RFE, the Director advised the Petitioner that the submitted salary data for the occupation of "Engineer" did not provide an appropriate basis for comparison for the occupations of "Sound Engineer" or "Technical Director." Therefore, the Director determined that he had not provided any objective earnings data demonstrating that he has commanded a high salary or other significantly high remuneration in relation to others in the same field. The Director requested that the Petitioner provide additional evidence, such as foreign tax documents, to document his prior annual earnings, as well as relevant comparative data such as geographical or position appropriate compensation surveys. The Director cited caselaw emphasizing that comparisons must be made to other similarly employed workers in the same industry.

In response to the RFE, the Petitioner submitted a letter from the [redacted] Government Statistics [redacted]. The letter states that the "average monthly wage" in the sound engineering field in [redacted] in 2019 was 43,717 [redacted] The Petitioner also provided copies of his [redacted] individual income tax returns (Forms [redacted]) for the years 2018 and 2019. He reported total income of [redacted] 6,835,770 in 2018 and [redacted] 7,285,320 in 2019.

The Director determined that the submitted statistics from [redacted] did not contain sufficient details to demonstrate what wage or remuneration would be considered "high" or "significantly high," as it was limited to averages without any additional breakdown. The Director also acknowledged receipt of the Petitioner's tax returns but emphasized that it was not accompanied by evidence that his "total income" was based solely on his salary or wages as a sound engineer and technical director.

On appeal, the Petitioner states that he "renews his arguments" that he meets this criterion, noting that he "already provided evidence of significantly high remuneration for his services" with his initial submission and in response to the RFE. He also emphasizes that he is submitting evidence that he has started offering his services to clients in [redacted] by opening a sole proprietorship business, but he does not explain how this evidence could demonstrate that he has commanded a high salary or other significantly high remuneration in relation to others as of the date of filing.

Upon review, we agree with the Director's determination that this criterion has not been met. While the Petitioner provided comparative salary data from [redacted] that information is lacking in probative details that would allow us to determine what constitutes a "high salary" for an experienced sound engineer and technical director working in the network television industry in [redacted]. [redacted] only purports to provide average salaries for "the sound engineering field," without specifying which occupations or job titles were included, and without providing any salary ranges within that field. As such, the information it provided was insufficient to establish that the Petitioner has commanded a high salary or other significantly high remuneration in relation to other similarly employed sound engineers and technical directors. *See Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994) (considering a professional golfer's earnings versus other PGA Tour golfers); *see also Grimson v. INS*, 934 F. Supp. 965, 968 (N.D. Ill. 1996) (considering NHL enforcer's salary versus other NHL enforcers); *Muni v. INS*, 891 F. Supp. 440, 444-45 (N. D. Ill. 1995) (comparing salary of NHL defensive player to salary of other NHL defensemen).

The Petitioner indicates that he has been working as a sound engineer and technical director (with supervisory responsibilities), and that he had spent the last several years working concurrently for four different networks or studios. While his total income in 2018 and 2019 was provided on his tax returns, those returns were not accompanied by evidence demonstrating the source of that income, and whether it was solely from his earnings as a sound engineer and technical director. We acknowledge that two of his claimed employers provided letters stating his monthly wages, and that those figures were higher than the general average provided by [ ] Even if those letters had been accompanied by payroll or other corroborating evidence, it is not sufficient for him to demonstrate that one or more of his employers paid him a wage for his work as a sound engineer and technical director that is "above average" when compared to all salaries in "the sound engineering field" in [ ]

Therefore, for the reasons discussed, the evidence in the record is not sufficient to show that the Petitioner has commanded a high salary or significantly high remuneration compared to other sound engineers and technical directors working in similar positions in [ ] The record does not demonstrate that the Petitioner meets this criterion.

B. Summary and Reserved Issue

We conclude that the Petitioner has not established that he meets the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(iv), (v) or (ix). As noted, he claims that he can meet four criteria and must demonstrate that he meets at least three criteria to satisfy the initial evidence requirement for this classification. While the Petitioner claims to meet one additional criterion at 8 C.F.R. § 204.5(h)(3)(viii), our determination that he does not the three criteria discussed above is dispositive of the appeal. Accordingly, we reserve and will not address the Director's separate determination that the Petitioner did not demonstrate that he has performed in a leading or critical role with an organization or establishment that has a distinguished reputation, pursuant to 8 C.F.R. § 204.5(h)(3)(viii).[9]

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

[9] *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).

national or international acclaim in the field, and that 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. 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.