U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 21655336

Date: AUG. 30, 2022

Appeal of Nebraska Service Center Decision

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

The Petitioner, an entrepreneur in the hospitality industry, 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 that the Petitioner had satisfied at least three of ten initial evidentiary criteria, as required. 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 individuals with 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; who seek to enter the United States to continue work in the area of extraordinary ability; and whose 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 the initial evidence requirements through either a one-time achievement or meeting three lesser criteria, 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 founded a [redacted] franchise in Ukraine in 2011. He entered the United States in 2017 as a B-1 nonimmigrant visitor for business, and changed to O-1 status in 2021 to work as global business development manager for smartphone app developer [redacted].[1] In a volunteer position as Chief Innovation Officer of the [redacted] he co-founded [redacted] "the innovation arm of [redacted]. The Petitioner has also advised the [redacted] and [redacted] at the University [redacted].

Because the Petitioner has not indicated or shown that he 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 Petitioner claims to have satisfied five of these criteria, summarized below:

- (i), Lesser nationally or internationally recognized prizes or awards;
- (ii), Membership in associations that require outstanding achievements;
- (iii), Published material about the individual in professional or major media;
- (iv), Participation as a judge of the work of others; and
- (v), Original contributions of major significance.

The Director concluded that the Petitioner met only one of the criteria, pertaining to judging the work of others. On appeal, the Petitioner asserts that his evidence "satisfies the applicable legal requirements" to satisfy the other four claimed criteria.

Upon review of the record, we conclude that the Petitioner has satisfied one additional criterion relating to judging and published material, for a total of two criteria.[2] We will discuss the other claimed criteria below.

[1] We acknowledge that O-1 nonimmigrant status relates to extraordinary ability. Nevertheless, the record of proceeding for the approved nonimmigrant petition is not before us, and we cannot determine whether the facts in that case were the same as those in the present proceeding, or whether the nonimmigrant petition was approved in error. The Petitioner submitted a copy of USCIS Policy Alert PA-2021-05, *Deference to Prior Determinations of Eligibility in Requests for Extensions of Petition Validity* (Apr. 27, 2021), https://www.uscis.gov/news/alerts, but that policy alert only address extensions of the validity of nonimmigrant petitions; it does not indicate that adjudicators of immigrant petitions owe deference to prior approvals of roughly analogous nonimmigrant petitions. The cited policy alert does not state or imply that the approval of an O-1 nonimmigrant petition creates a presumption of eligibility for immigrant classification as an individual of extraordinary ability.

[2] The Director determined that an article from the Ukrainian edition of *Forbes* lacked an author credit and publication date as required by 8 C.F.R. § 204.5(h)(3)(iii). The Petitioner states on appeal that he had submitted this information, and the record confirms that he submitted a letter from the magazine's editor containing that information.

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. 8 C.F.R. § 204.5(h)(3)(i).

The Petitioner claims to have satisfied this criterion because the Ukrainian edition of *Forbes* named him among their [redacted] entrepreneurs who have achieved success before age 30, and *My Kharkov* ranked him among the [redacted]

The Director requested more evidence to show that the articles described above constitute prizes or awards. In response, the Petitioner resubmitted the *My Kharkov* article, and a letter from the "Chief Redactor" of the Ukrainian edition of *Forbes*. That official refers to [redacted] but the accompanying printouts from the U.S. website of *Forbes* refer only to the [redacted] not award.

In the denial notice, the Director concluded that the Petitioner had not shown that recognition in these publications amounts to prizes or awards. On appeal, the Petitioner disputes this conclusion but offers no specific rebuttal. He states the conclusion that his evidence "satisfies the applicable legal requirements," but makes no argument to support that conclusion.

The Petitioner has not shown that he received any nationally or internationally recognized prizes or awards for excellence in his field. As noted above, we have already concluded that the Forbes article satisfies the separate criterion at 8 C.F.R. § 204.5(h)(3)(iii) relating to published material.

Assertions about the prestige of inclusion in *Forbes*'s [redacted] list would have been considered in the context of a final merits determination, if the proceeding had reached that point.

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 contends that he meets this criterion because he is the Chief Innovation Officer of the [redacted] and because of "[s]election to represent the hospitality industry in the exclusive invite only [redacted] program at [redacted] University." The Petitioner submitted no evidence to establish that the [redacted] program is an association in the field, and the Petitioner submitted no further evidence about the program in response to a request for evidence.

A printout from the [redacted] website confirms the Beneficiary's position there, but the Petitioner has not established that [redacted] membership conforms to the regulation by requiring outstanding achievements of its members, as judged by recognized national or international experts. The [redacted] leadership is not, itself, an association in the field.

In the denial notice, the Director concluded that the Petitioner had not submitted documentary evidence, such as bylaws, to establish that the [redacted] requires outstanding achievements of its members, as judged by recognized national or international experts in their disciplines or fields. On appeal, the Petitioner states, without elaboration, that his evidence "satisfies the applicable legal requirements."

The Petitioner has not met his burden of proof with respect to this criterion.

> *Evidence of the alien'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).

In his initial submission, the Petitioner cited four submitted exhibits as evidence of his qualifying contributions. First, a blog published on the website of the *Wall Street Journal* spotlights the [redacted] at one of the Petitioner's clubs, which "offers complimentary drinks [in exchange] for a variety of social media activities." The blog post does not refer to this innovation as a contribution of major significance in the field, and the Petitioner has not submitted other evidence of such significance, such as, for example, showing that the hospitality industry has widely adopted a similar policy of bartering social media mentions for drinks.[3] He indicated that the [redacted] app facilitates similar transactions for other bars, but the record does not establish the significance of that app. For example, the Petitioner has not established widespread use of the app.

The second cited exhibit is a 2019 article from *Bar & Restaurant*, with the title [redacted] The article indicates that the [redacted] and a venture capital firm called [redacted] were collaborating on a startup incubator. The article describes the process for selecting candidate companies, but does not demonstrate that, or explain how, the project itself is of major significance in the field. The article states that the impetus behind the project is to spur innovation in the hospitality industry, but it does not indicate that the project has already led to such innovation. Rather, it states that the first fruits of the project would be presented at a trade show that, at the time of publication, had not yet occurred.

The third cited exhibit is a letter from the director of [redacted] at [redacted] describing the Petitioner's "cooperation with [redacted] on projects aimed at improving technology opportunities for the hospitality industry." The letter indicates that Intel named the Petitioner as its advisor with regard to "development of innovative hardware solutions for various venues in the hospitality industry worldwide." As with the article described above, the letter does not identify any specific innovations or projects. Rather, the letter indicates that the Petitioner "has already connected [redacted] with 12 other hardware development companies." From the letter, it is not entirely clear what the Petitioner's claimed original contribution is. In the absence of other information or evidence in support, acting as a volunteer advisor is not inherently an original contribution.

Finally, the Petitioner submits a letter from the executive director of [redacted], which "teaches entrepreneurship skills for future professionals in the Hospitality sector." The letter indicates that the Petitioner "provides his invaluable expertise and allows us to attract some of the best innovators," but the Petitioner has not established how this is significant to the greater field outside of [redacted]

In a request for evidence, the Director stated that the Petitioner's initial submission provided "broad attestations" but not "specific examples of original contributions that rise to a level consistent with major significance."

[3] The blog post dates from 2014, seven years before the filing of the petition, and therefore there has been ample time for other establishments to adopt similar practices, and for evidence of such adoption to accumulate.

In response, the Petitioner submitted a letter from an official of [redacted] which organizes "the biggest nightclub and bar show in the world." The letter states that the Petitioner "has incubated and then introduced us to several successful startups . . . that disrupted our industry in the most positive sense. I believe their success would not be possible without [the Petitioner's] unique system of scaling and providing the market access to these startups." The letter names several of these startups, but does not provide further details or corroborating evidence. Even if these startups have, themselves, made an impact on the hospitality industry, it does not necessarily follow that the Petitioner's involvement in the incubation process is, itself, a contribution of major significance in the field. The Petitioner does not provide details about his "unique systems" or establish, for example, that his systems have resulted in greater success for the startups involved.

The Director denied the petition, stating that the Petitioner had not identified specific original contributions or provided details to show the major significance of those contributions. On appeal, the Petitioner maintains that his evidence "satisfies the applicable legal requirements," but he does not elaborate or identify any specific error by the Director in this regard.

The Petitioner has not satisfied 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 lesser 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 conclusion 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. U.S. Citizenship and Immigration Services 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 recognition of his work is indicative of the required sustained national or international acclaim or demonstrates 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 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).

The record indicates that the Petitioner owned successful [redacted] in Ukraine, and that he has been active in incubating hospitality businesses in the United States, but while we acknowledge a level of success, it does not demonstrate sustained national or international acclaim. The record refers to the Petitioner's most recent work in the United States in terms of its potential, rather than its existing impact. Speculation about what could result from the Petitioner's ongoing work is not an adequate basis for granting the extremely restrictive immigrant classification the Petitioner seeks. The record does not show sustained recognition and attention outside of entities where he has worked as an employee, consultant, or volunteer. We note that his O-1 nonimmigrant status is contingent on his

employment with [redacted] but the record contains minimal information about the company and his work there.

The Petitioner's statement on appeal identifies only one specific error by the Director, which we have taken into account in the above discussion. The general, blanket assertion that his evidence "satisfies the applicable legal requirements" does not rebut or overcome the Director's other adverse findings.

The Petitioner has not demonstrated eligibility as an individual of extraordinary ability. We will dismiss the appeal for the above stated reasons.

ORDER: The appeal is dismissed.