U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 23071325

Date: DEC. 9, 2022

Appeal of Texas Service Center Decision

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

The Petitioner, an oil and gas 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 Texas Service Center Director denied the Form I-140, Immigrant Petition for Alien Workers (petition), concluding the Petitioner did not establish that they had a major, internationally recognized award, nor did they demonstrate they met at least three of the ten regulatory criteria. The matter is now before us on appeal. The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). We review the questions in this matter *de novo*. *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). 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 indicates he is an oil and gas construction specialist who earned a master's degree in project management from the [redacted] University [redacted] in 2010, and a bachelor's degree in mechanical engineering from [redacted] University [redacted] India) in 2005. He also holds related project management certifications.

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). Before the Director, the Petitioner claimed to have met five of the regulatory criteria in the following categories:

- Participation as a judge;
- Contributions of major significance;
- Authorship of scholarly articles;
- Performance of a leading or critical role for distinguished entities; and
- High salary or remuneration.

The Director decided that the Petitioner satisfied two of the criteria relating to judging and authorship of scholarly articles, but he had not satisfied the criteria associated with original contributions, leading or critical role, or high salary or remuneration. On appeal, the Petitioner maintains that he meet each of the evidentiary criteria the Director declined to grant.[1] After reviewing all the evidence in the record, we agree with the Director that the Petitioner has satisfied the judging and the scholarly articles criteria, but not any of the remaining claimed classes of evidence.

[1] We note the appeal brief in this case was in excess of 190 pages, of which only a small portion is necessary to dispose of this appeal. The overwhelming majority of the appellate evidence was previously offered before the Director, and we gently note for the Petitioner that the documentation he submitted for the record before the Director continues to be present for the appeal and it is unnecessary to resubmit large amounts of previously submitted materials. *Garey v. James S. Farrin, P.C.*, 35 F.4th 917, 920 n.1 (4th Cir. 2022) (imploring litigants to only submit the necessary amount of material on appeal in the interest of the environment and citing Theodore Seuss Geissel, *The Lorax* 23 (1971) ("I speak for the trees, for the trees have no tongues.")).

> *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 specification for which classification is sought.* 8 C.F.R. § 204.5(h)(3)(iv).

The Director determined the Petitioner met the requirements of this criterion and we agree with the Director's decision.

> *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).

The primary requirement here, is that the Petitioner's contributions in their field were original. The plain language of this regulatory criterion also requires that the contributions rise to the level of major significance in the field as a whole, rather than to a project or to an organization. *See Visinscaia*, 4 F. Supp. 3d at 135–36. The regulatory phrase "major significance" is not superfluous and, thus, it has some meaning. *See United States v. Campos-Serrano*, 404 U.S. 293, 301 n.14 (1971) (finding that if it is possible, statutory or regulatory language ought to be construed in its entirety to prevent any clause, sentence, or word from being rendered be superfluous, void, or insignificant); *Inhabitants of Montclair Twp. v. Ramsdell*, 107 U.S. 147, 152 (1883). Further, the Petitioner's contributions must have already been realized rather than being potential, future improvements. Contributions of major significance connotes that the Petitioner's work has significantly impacted the field. The Petitioner must submit evidence satisfying all of these elements to meet the plain language requirements of this criterion.

The Petitioner provided several letters from those working in the petroleum industry and he further claims eligibility here based on copyright certificates, a certificate of excellence, a peer-reviewed published book, participation in oil and gas conferences, and contracts with companies using his "developed technology." The Director determined that the Petitioner did not meet the requirements of this criterion. The Director noted the Petitioner did not provide supporting material to corroborate the claims of the letters' authors. Additionally, although acknowledging the Petitioner's published and peer-reviewed work as supporting the originality of his contributions, they determined his articles and research did not reflect this material was of major significance in the broader field.

On appeal, the Petitioner claims the Director overlooked much of the evidence he submitted. Even though the Petitioner's appeal brief lists the material he alleges the Director failed to evaluate in the decision, his appeal does not explain how this material—consisting of 166 pages—sufficiently satisfies this criterion's requirements. In visa petition proceedings, it is a petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Commensurate with that burden is responsibility for explaining the significance of proffered evidence. *Repaka v. Beers*, 993 F. Supp. 2d 1214, 1219 (S.D. Cal. 2014).

Filing parties should not submit large quantities of evidence without notifying the appellate body of the specific documentation that corroborates their claims within such material, as doing so places an undue burden on the appellate body to search through the documentation without the aid of the filing party's knowledge. *Toquero v. I.N.S.*, 956 F.2d 193, 196 n.4 (9th Cir. 1992). A reviewing body is not

required to sift through the record to search for errors and build the appellant's argument before dismissing the appeal. *Id.*; *Spear Mktg., Inc. v. BancorpSouth Bank*, 791 F.3d 586, 599 (5th Cir. 2015); *S.E.C. v. Thomas*, 965 F.2d 825, 827 (10th Cir. 1992). The truth is to be determined not by the quantity of evidence alone but by its quality. *Chawathe,* 25 I&N Dec. at 376 (citing *Matter of E-M-*, 20 I&N Dec. 77, 80 (Comm'r 1989)).

"[I]ssues adverted to in a perfunctory manner, unaccompanied by some effort at developed argumentation, are deemed waived." *United States v. Warshak*, 631 F.3d 266, 319 (6th Cir. 2010) (quoting *Tolbert v. Queens College,* 242 F.3d 58, 75 (2d Cir.2001)); *see also McPherson v. Kelsey*, 125 F.3d 989, 995-96 (6th Cir. 1997). The Petitioner has essentially abandoned his claims under this criterion by not adequately presenting his arguments on appeal. Because the Petitioner has not satisfied his burden on appeal to inform us of how this significant amount of material should be applied to the regulatory requirements, we will not offer an in-depth discussion of his claims or the evidence.

A brief review of the evidence and arguments advanced on appeal does not reveal that any of the Petitioner's activities have resulted in any significant impact on his broader field as a whole, as opposed to impacts on individual projects. The letters primarily discuss how he made improvements to particular projects or to operations within the companies that have employed him. And only one author of a support letter indicates he has relied on the Petitioner's work and implemented it within his company. However, what is lacking is an indication of how that has impacted the industry as a whole. It is also not apparent how the Petitioner's other achievements or works have resulted in a significant effect within the broader field.

> *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 Director determined the Petitioner met the requirements of this criterion and we agree with that conclusion.

> *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).

A leading role should be apparent by its position in the overall organizational hierarchy and the role's matching duties. A critical role should be apparent from the petitioner's impact on the organization or the establishment's activities. Ultimately, the leading or the critical role must be performed on behalf of the organization that enjoys a distinguished reputation, rather than for a subordinate group. *See Strategati, LLC v. Sessions*, No. 3:18-CV-01200-H-AGS, 2019 WL 2330181, at *7 (S.D. Cal. May 31, 2019); *Noroozi v. Napolitano*, 905 F. Supp. 2d 535, 545 (S.D.N.Y. 2012). The Petitioner's performance in this role should establish whether the role was critical for organizations or establishments as a whole.

The Petitioner must demonstrate that the organizations or establishments have a distinguished reputation. U.S. Citizenship and Immigration Services (USCIS) policy reflects that organizations or establishments that enjoy a distinguished reputation are "marked by eminence, distinction, or excellence." 6 *USCIS Policy Manual* F.2 (Appendices), https://www.uscis.gov/policymanual (citing to the definition of *distinguished*, *Merriam-Webster*, https://www.merriam-

webster.com/dictionary/distinguished). The Petitioner must submit evidence satisfying all these elements to meet the plain language requirements of this criterion.

The Director determined that the Petitioner did not meet the requirements of this criterion as it relates to performing in a leading or in a critical role. On appeal, the Petitioner claims eligibility under two organizations: [redacted] and [redacted]. The Petitioner relies on four letters on appeal as supporting evidence under this criterion.

First, we discuss [redacted] Whether this entity enjoys a distinguished reputation is a mandatory requirement. Regarding their reputation, the Petitioner provided his own account in correspondence, and in response to the Director's request for evidence he offered material about the organization from *Wikipedia*. With regard to information from *Wikipedia*, there are no assurances about the reliability of the content from this open, user-edited internet site. *See United States v. Lawson*, 677 F.3d 629, 650–51 (4th Cir. 2012); *Badasa v. Mukasey*, 540 F.3d 909, 910–11 (8th Cir. 2008); *see also Sibanda v. Holder*, 778 F.3d 676, 680 (7th Cir. 2015). The *Wikipedia* website even contains a disclaimer indicating it makes no guarantee of the validity of the information found on the site. *Wikipedia: General disclaimer*, Wikipedia (Dec. 9, 2022), https://en.wikipedia.org/wiki/Wikipedia:General_disclaimer.

Although some of the letters the Petitioner provided, and his own filing statements, imply [redacted] might enjoy a distinguished reputation, the record lacks objective materials. Some examples might include but are not limited to prestigious awards, media coverage, or published rankings to demonstrate [redacted] has a distinguished reputation. Also, we note the record lacks adequate evidence relating to the company's history in the industry.

Because the Petitioner has not established [redacted] enjoys a distinguished reputation, it is unnecessary that we offer a detailed analysis of the roles he has performed for them. Nevertheless, we offer a brief account. The Petitioner's roles at [redacted] appear to be lower on the leadership spectrum as he was characterized as a "Project Management Professional" by [redacted] formerly the Construction Director of Global Technical Services at [redacted] [redacted] has not stated, nor has he described the Petitioner's duties or his performance in such a manner that the Petitioner can be said to have led the organization. The record does not establish the Petitioner performed in a leading role for [redacted] Further, the Petitioner has not demonstrated that any subordinate entity (e.g., individual projects, divisions, or departments) in which he led, themselves enjoyed a distinguished reputation. As a result, the Petitioner has not shown that he performed in a leading role for an organization or establishment that enjoys a distinguished reputation.

Additionally, while his roles appear to have been leading or critical to [redacted] individual projects, the record lacks evidence that those projects, either individually or collectively, resulted in any significant impact on the organization. And it is unclear from the record that the Petitioner's performance on the identified projects has contributed in a way that is of significant importance to the outcome of the organization or establishment's activities. *See* 6 *USCIS Policy Manual*, *supra*, at (Appendices). Although we acknowledge his performance in some instances furthered his organization's broader business dealings, the Petitioner has not demonstrated that such incremental business arrangements rise to the level the regulation and USCIS policy requires.

Next, we consider whether the Petitioner has shown [redacted] is a qualifying organization or establishment. Again, outside his own statements, the only evidence about this organization the Petitioner provided was an article about this entity originating from *Wikipedia*, which we noted above is not a reliable resource and does not satisfy his burden regarding this organization's reputation. As it relates to his role for this organization, the Petitioner provided a letter from a site manager who was the Petitioner's supervisor while he was a construction manager during the construction and pre-commission phase of a [redacted] production facility from 2006–2008.

This former supervisor described the Petitioner's work as leading and critical on the single facility in India. Although the supervisor noted a novel idea the Petitioner proposed to increase [redacted] cash flow, the extent of this increase is not apparent from the letter, and we are unable to determine how critical those increased funds were to the organization's operations companywide. The evidence and the claims the Petitioner advances relating to [redacted] are insufficient to satisfy the standard here.

Although the Petitioner served in a managerial position on company projects, he has not submitted evidence that meets the plain language requirements of this criterion.

> *Evidence that the alien 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).

The Petitioner claimed eligibility under this criterion noting his recent work as a senior technical services specialist for [redacted] falls under the U.S. Department of Labor's *Occupational Outlook Handbook* (*Handbook*) profile for Construction Managers. The Director determined that the Petitioner did not meet the requirements of this criterion. Specifically, the Director found the Petitioner did not establish that the appropriate occupation in which to compare was that of Construction Managers. The Director noted the Petitioner's responsibilities exceeded what is normally associated with a Construction Manager and opined that it appeared a more appropriate comparison is an engineer in the oil and gas industry.

On appeal, the Petitioner simply disagrees with the Director's findings and offers a letter from the human resources department for [redacted] This letter states the position the Petitioner occupies was created for those who transition from field engineering roles to a construction management role on promotion and it is "at par with Dy. Construction Manager in the general construction industry." First, neither the letter nor the Petitioner explain what a "Dy Construction Manager" position consists of. Nevertheless, it appears they are implying that this is a general construction managerial position.

Although we accept [redacted] account regarding the similarities between the position the Petitioner previously occupied in their organization and construction managers in general, we find the letter to be insufficient to satisfy the Petitioner's preponderance burden. The letter did not offer any job description for his position, much less a detailed explanation. Nor did it compare and contrast the responsibilities of the position the Petitioner occupied with the Construction Manager profile within the *Handbook*. At best, we have the Petitioner's and [redacted] claims of the similarities, but this material lacks persuasiveness.

A petitioner's burden of proof comprises both the initial burden of production, as well as the ultimate burden of persuasion. *Matter of Y-B-*, 21 I&N Dec. 1136, 1142 n.3 (BIA 1998); *also see* the definition

of burden of proof from *Black's Law Dictionary* (11th ed. 2019) (reflecting the burden of proof includes both the burden of production and the burden of persuasion). Satisfying the burden of persuasion means the filing party must establish the degree to which their arguments and evidence should persuade or convince USCIS that the requisite eligibility parameters have been met (i.e., the obligation to persuade the trier of fact of the truth of a proposition). *Dir., Office of Workers' Comp. Programs, Dep't of Labor v. Greenwich Collieries*, 512 U.S. 267, 274 (1994). Here, the Petitioner has not met that burden, and as a result, he has not submitted evidence that meets the plain language requirements of 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 do not need to 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 that goal. 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 their 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). Moreover, the record does not otherwise demonstrate that the Petitioner has garnered national or international acclaim in the field, and they are one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) and 8 C.F.R. § 204.5(h)(2).

For the reasons discussed above, the Petitioner has not demonstrated their 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.