U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19083537

Date: JAN. 24, 2022

Appeal of Nebraska Service Center Decision

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

The Petitioner, a software developer and financial analyst, 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 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). The regulation at 8 C.F.R. § 204.5(h)(4) allows a petitioner to submit comparable evidence if they are able to demonstrate that the standards at 8 C.F.R. § 204.5(h)(3)(i)–(x) do not readily apply to the individual's occupation.

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 states that he is the vice president of application development and a collateralized loan obligation (CLO) specialist at [redacted] a [redacted] hedge fund for whom he currently works in H-1B nonimmigrant status. He previously worked as a software engineer at [redacted] and as a programmer analyst and development database administrator for [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 six 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;
- (v), Original contributions of major significance;
- (viii), Leading or critical role for distinguished organizations or establishments; and
- (ix), High remuneration for services.

The Petitioner also claims to have submitted comparable evidence beyond the regulatory criteria.

The Director concluded that the Petitioner met only one of these criteria, numbered (viii). On appeal, the Petitioner asserts that he has submitted sufficient evidence to satisfy the other five claimed criteria as well as comparable evidence. We will discuss these claimed criteria below.

> *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 initially cited his membership in the [redacted] but he does not mention this membership on appeal. Therefore, we conclude that he has abandoned this claim.[1]

The appeal focuses on the Petitioner's title of "Chartered Financial Analyst" (CFA) from the CFA Institute. The Director concluded that the Petitioner had not shown that the CFA Institute requires outstanding achievements of its members. We agree.

The record shows that, while the CFA Institute has members, the Petitioner's CFA charter is not, itself, a membership in an association. Rather, it is a "credential" earned by "candidates who enroll in [a] program" and "appear for three stages of exams," each with a pass rate of around 50%; roughly 16% of enrollees earn the charter each year.[2] Successful completion of what a CFA official calls a "professional licensing test," however difficult or rigorous, is not inherently an outstanding achievement.

The Petitioner asserts: "Becoming a CFA Charterholder requires more than merely passing all three exams." But the other requirements – such as a bachelor's degree or near-completion of a baccalaureate program, or 4000 hours of work experience – are not outstanding achievements either.

Materials in the record indicate that "[m]ore than 100,000 people take the test . . . every year," meaning that, even with the claimed completion rate of around 16%, more than 16,000 people earn CFA charters every year. The president and chief executive officer of the CFA Institute states: "We have approximately 170,000 Charter Holders today." The Petitioner has not established that these figures are consistent with the exclusivity that the regulation requires. The Institute's president does not assert that recognized national or international experts judge applicants' achievements.

The Petitioner has not established that his CFA charter constitutes a qualifying membership.

> *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 states, on appeal, that the Director "erred in discounting the Petitioner's receipt of awards including the CFA Charter, as well as the Options Award for 'Outstanding Achievement by a Loan Specialty Technologist in the CLO Space,' a 'Certificate of Excellence' from Microsoft, and a '5-Year Milestone' award from the CFA Institute." The Petitioner does not elaborate as to how the Director erred with regard to these claimed awards. The general assertion that the Director erred does not identify any specific error of law or fact as required by the regulation at 8 C.F.R. § 103.3(a)(1)(v).[3]

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[1] *See Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012) (stating that when a filing party fails to appeal an issue addressed in an adverse decision, that issue is waived). *See also Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005), citing *United States v. Cunningham*, 161 F.3d 1343, 1344 (11th Cir. 1998); *Hristov v. Roark*, No. 09–CV–27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (plaintiff's claims were abandoned as he failed to raise them on appeal to the AAO).

[2] An article in the record indicates that "somewhere between 10% and 20% of candidates who sign up for the exam end up not showing up for the test." The article does not specify whether the pass rates take those figures into account.

[3] *See also Greenbriar, Ltd. v. City of Alabaster*, 881 F.2d 1570, 1573 n.6 (11th Cir. 1989) (stating that passing references to issues are insufficient to raise a claim for appeal, and such issues are deemed abandoned).

The only claimed award for which the Petitioner offers substantive and specific discussion on appeal is his CFA charter, discussed above. He contends that the charter is so rigorous and coveted that it constitutes an award as well as a membership. The Petitioner asserts that "CFA examinations are considered to be one of the toughest exams to pass," and that "CFA charter holders [are] more sought after by wealth management firms due to their investment specific niche knowledge and skills." The Petitioner has not established that an occupational credential, earned by passing an examination, constitutes a prize or award for excellence. Furthermore, the record shows that thousands of individuals pass the exam, and thereby earn the charter, every year. (Articles in the record compare the CFA charter to a master's degree, which is a mark of expertise and achievement, but not inherently a prize or award.) The Petitioner has not shown that the conveyance of these charters attracts national or international recognition. (The regulation requires recognition of the award itself; the reputation of the awarding entity does not establish that recognition.)

The Petitioner has not established that his CFA charter is a nationally or internationally recognized award.

> *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)*

The Petitioner participated in a panel discussion at what he deems a "prestigious industry conference." He contends that media coverage of this conference satisfies this regulatory criterion, and also that his participation is, itself, comparable evidence under 8 C.F.R. § 204.5(h)(4). He does not establish how this presentation is comparable to any of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3) that do not readily apply to his occupation. The Petitioner submits no evidence to support his claim that his invitation to participate in that panel is "recognition of his prestige in the industry." His very presence at the event does not warrant such an inference. As noted above, the burden of proof is on the Petitioner. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988) (citing *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980)). A press release in the record shows that the Petitioner's employer is a client of the organization that held the conference.

The claimed published material is in the form of a blog post on the conference organizer's website. The Petitioner does not submit evidence to show that this blog qualifies as a professional or major trade publication or other major media.

Furthermore, the blog post is not published material about the Petitioner, as the regulation requires. Instead, the blog post is about "alternative data" and "a panel discussion on the topic" at the aforementioned conference. The Petitioner's name appears only once in the post, in a sentence naming all the panel members, and there is no other recognizable reference to the Petitioner's work in particular.

The submitted printout of a blog post does not satisfy the requirements of the regulation.

> *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 asserts that his $150,000 annual salary meets this criterion. The Director initially stated, in a request for evidence, that the Petitioner meets the criterion, but the Director retracted this determination in the denial notice. In denying the petition, the Director stated that the Petitioner did not document his salary, but this assertion is incorrect. The record contains tax documents showing that [redacted] paid the Beneficiary $158,329 in 2018 and $158,898 in 2019. Payroll receipts from late 2019 show a base salary of $150,000 per year.

Nevertheless, the Petitioner's identification of the above errors by the Director is not dispositive. The regulation requires comparison of the Petitioner's compensation to others in the field. The Petitioner submits salary statistics for software developers, such as Department of Labor data indicating that the Level 4 wage for "Software Developers, Applications" in the [redacted] metropolitan area is $137,426 per year. In this respect, the Petitioner clearly represents his "field" as that of a software developer.

But the record does not consistently portray the Petitioner simply as a software developer. In this respect, it is significant that the Petitioner heavily emphasizes his title as a chartered financial analyst, contending that this title alone suffices to satisfy two of the regulatory criteria. The record does not indicate, and the Petitioner does not expressly claim, that the job titles "financial analyst" and "software developer" are largely interchangeable. Rather, an article about the CFA exam indicates that it "covers topics ranging from ethics and professional standards, to quantitative methods, economics, financial reporting and analysis, corporate finance, equity investments, derivatives, alternate investments, portfolio management, and wealth planning." The Petitioner has not submitted sufficient evidence to provide a basis for comparing his salary to that of other individuals with the duties of not only a software developer, but also of a chartered financial analyst. We also cannot ignore that the Petitioner describes himself as the vice president of a hedge fund and a CLO specialist. The Petitioner has not established that, or explained why, salary information for software developers is the appropriate metric for comparing his compensation to that of others in the same field.

The above discussion shows that the Petitioner did not meet four of the six claimed criteria (or provide comparable evidence). Therefore, the Petitioner cannot meet the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3). Detailed discussion of the remaining one claimed criterion, relating to original contributions of major significance, cannot change the outcome of this appeal. Therefore, we reserve this issue.[4] Likewise, we need not revisit the criterion granted by the Director, relating to performance in a leading or critical role for organizations or establishments with a distinguished reputation.

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.

[4] *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).

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). When considering the broader question of acclaim, the Petitioner states that his contributions are "proprietary technology, and hedge funds do not share their proprietary information." This assertion inherently argues against the conclusion that his work has earned him recognition not just from his employer, but throughout the field. The Petitioner has documented a measure of success in his field, but he has not shown the widespread national or international recognition that the statute and regulations demand.

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

ORDER: The appeal is dismissed.