U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20215990

Date: JUNE 13, 2022

Appeal of Texas Service Center Decision

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

The Petitioner, an [redacted] engineering manager, 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 Texas 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 Director also concluded that the Petitioner had not shown that his entry would substantially benefit prospectively the United States. 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). 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 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

After earning a Bachelor of Engineering degree, specializing in [redacted] engineering, from the University of [redacted] in Australia, the Petitioner has worked since 2000 as an engineer in [redacted] Following employment for [redacted] and later as a consultant, the Petitioner began working for [redacted] in 2011. Since 2013, he has worked for [redacted] in the United States in various capacities. When he filed the petition in May 2021, he was a [redacted] engineering manager at [redacted] Office in [redacted] Texas, holding nonimmigrant status as an L-1A intracompany transferee in a managerial or executive capacity. The Petitioner states that [redacted] has offered him "the position of [redacted] Engineering Manager [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 four of these criteria, and to have submitted comparable evidence relative to a fifth criterion, summarized below:

- (iv), Participation as a judge of the work of others;
- (v), Original contributions of major significance;
- (vi), Authorship of scholarly articles (comparable evidence);
- (viii), Leading or critical role for distinguished organizations or establishments; and
- (ix), High remuneration for services.

The Director concluded that the Petitioner established a leading or critical role for a distinguished organization and high remuneration. We agree with the Director regarding these two criteria.

On appeal, the Petitioner asserts: "For his [petition] to be granted, [the Petitioner] needs to establish just one of the three [remaining claimed] criteria . . . and to demonstrate his entry will substantially benefit prospectively the United States." But under the *Kazarian* framework, meeting three evidentiary criteria does not automatically or presumptively establish sustained national or international acclaim. The final merits determination must show that the record as a whole establishes such acclaim. The Petitioner asserts that he has established the required acclaim, but he does not elaborate beyond asserting that he meets three or more of the initial evidentiary criteria, which is insufficient to meet the Petitioner's burden of proof in this matter.

Upon review of the record, we conclude that he has met a third criterion through participating as a judge of the work of others. Because the satisfaction of three criteria is sufficient for us to proceed to a final merits determination, we need not discuss other claimed criteria at length. Nevertheless, the

final merits determination will take into consideration the evidence that the Petitioner has submitted regarding his claims of original contributions of major significance and comparable evidence of scholarly articles and leading or critical role.

Because the Petitioner submitted the required initial evidence, we will evaluate whether he has demonstrated, by a preponderance of the evidence, his sustained national or international acclaim and that he is one of the small percentage at the very top of the field of endeavor, and that his achievements have been recognized in the field through extensive documentation. In a final merits determination, we analyze a petitioner's accomplishments and weigh the totality of the evidence to determine if their successes are sufficient to demonstrate that they have extraordinary ability in the field of endeavor. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20.[1] In this matter, we determine that the Petitioner has not established eligibility.

Much of the evidence in the record concerns the Petitioner's role and reputation within [redacted] The Petitioner holds a position of significant responsibility at [redacted] earning compensation in excess of half a million dollars per year. But, while we acknowledge that [redacted] is a major [redacted] company, that fact alone is not sufficient to establish national or international acclaim.

The Petitioner asserts that his "ideas have also left a lasting impact on the [redacted] industry, given that many of the world's top [redacted] companies are shareholders in nearly all of [redacted] projects." But the Petitioner has also repeatedly argued that much of his work is confidential. For example, the regulation at 8 C.F.R. § 204.5(h)(3)(vi) calls for evidence of authorship of scholarly articles in the field, in professional or major trade publications or other major media. The Petitioner has asserted that internal [redacted] materials constitute comparable evidence under 8 C.F.R. § 204.5(h)(4), because it cannot be published outside the company owing to its proprietary nature.[2]

There is an obvious tension between the two assertions that, on the one hand, the Petitioner has an impact throughout the industry, while on the other hand much of his work product cannot be disseminated outside of [redacted] These conflicting perspectives complicate any attempt to show that the Petitioner has earned acclaim beyond the company that employs him. The assertion without evidence that [redacted] success has a "ripple effect" among other companies, and that the Petitioner's innovations have spurred rival companies to make improvements to their own practices, does not translate to wider recognition of the Petitioner individually, which is what the statute and regulations require.

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[1] *See also* 6 *USCIS Policy Manual* F.2(B)(2), https://www.uscis.gov/policymanual (stating that USCIS officers should then evaluate the evidence together when considering the petition in its entirety to determine if the petitioner has established, by a preponderance of the evidence, the required high level of expertise for the immigrant classification).

[2] The regulation at 8 C.F.R. § 204.5(h)(4) allows for the submission of comparable evidence in instances when the regulatory criteria do not readily apply to the occupation. If professional or major trade publications exist in the field of [redacted] engineering, then the "scholarly articles" criterion at 8 C.F.R. § 204.5(h)(3)(vi) should readily apply to the Petitioner's occupation. The Petitioner contends that there are *few* such publications, but nevertheless they do exist. The Petitioner submits a web printout listing several hundred journal titles, only one of which [redacted] has a title that clearly relates to the [redacted] industry. This list of journal titles is not comprehensive; rather, it is a list of journals issued by one publisher, identified only by the copyright notice attributed to "Open Access Publisher." The several hundred titles on the submitted list amount to only a small fraction of the "28,100 active scholarly peer-reviewed English-language journals" mentioned elsewhere in the record. The available evidence, although incomplete, is sufficient for us to conclude that the "scholarly articles" criterion at 8 C.F.R. § 204.5(h)(3)(vi) readily applies to [redacted] engineering.

Letters intended to show how the Petitioner has impacted the field include qualifiers that appear to limit the scope of his contributions. For example, they may indicate that particular safety and efficiency initiatives are used on numerous [ ] projects in the [ ] which does not indicate adoption throughout the field. Assertions of wider impact, influence, or setting an example for the industry lack specificity and corroboration.

The Petitioner asserts that he "developed a plan to enable a crane to continue working safely [during] helicopter operations," whereas prior practice was to "shut down all crane operations prior to landing a helicopter" on [ ] The Petitioner contends that "[t]his is a major change in the industry," but he does not show that the practice has been adopted outside [ ] Rather, the Petitioner describes a pilot program that has only recently begun implementation on a small number of [ ] Such innovations may present important cost reductions for the Petitioner's employer, but he has not shown that they have resulted in sustained national or international acclaim.

Furthermore, it is sometimes difficult to tell whether the Petitioner personally devised certain initiatives and projects, or, rather, promoted and shepherded ideas that originated elsewhere. For instance, the operations manager of [ ] one of [ ] contractors, states that the Petitioner led "the collaborative development and implementing of [ ] procedures for [ ] and [ ] *Used in other parts of the industry*, [the Petitioner] led the implementation of these processes *for collaborations between* [ ] *and* [ ] (Emphasis added.) The record does not establish that this is the Petitioner's original contribution. The letter's phrasing suggests that processes were already "[u]sed in other parts of the industry," in which case the Petitioner's adoption of those methods "for collaborations between [ ] and [ ]" may have benefited those two companies, but it would not have amounted to an original contribution on his part.

The record shows that the Petitioner has served on various committees and review panels involving other companies and government agencies. But the record does not establish how common or uncommon it is for high-ranking engineers in the Petitioner's field to serve in this way. Furthermore, while some of these bodies included individuals from different companies and government agencies, the above-mentioned general manager states that the Petitioner "was selected by [ ] leadership for participation in teams and committees." Thus, his selection does not inherently demonstrate recognition outside the company. Without evidence to provide a broader context, the Petitioner's participation in these bodies is not inherently an indication of sustained national or international acclaim. The Director acknowledged the Petitioner's apparent prominence *within* [ ] finding that he performs in a leading or critical role for an organization with a distinguished reputation, fulfilling the criterion at 8 C.F.R. § 204.5(h)(3)(viii); the question is not whether the Petitioner's work is important to [ ] but rather, whether he has achieved the broader recognition, rising to the level of sustained national or international acclaim, that the statute and regulations demand.

For the above reasons, we conclude that the Petitioner has not established the sustained national or international acclaim required for eligibility. Therefore, we need not consider the separate question of whether his entry would substantially benefit prospectively the United States.[3]

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[3] *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).

III. CONCLUSION

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).

We will dismiss the appeal, because the Petitioner has not demonstrated eligibility as an individual of extraordinary ability.

ORDER: The appeal is dismissed.