U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 23372976

Date: APR. 25, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a physician, 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 the Petitioner met the initial evidence requirements for the classification by establishing his receipt of a major, internationally recognized award or by meeting three of the ten evidentiary criteria at 8 C.F.R. § 204.5(h)(3). The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (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)(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 is a physician and contends he has a track record of success and sustained national and international acclaim. The Petitioner further stated he is an accomplished gastroenterologist who assumed key positions within distinguished medical and heath institutions. 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 nine of these criteria, summarized below:

- (i), documentation of the individual's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor
- (ii), membership in associations requiring outstanding achievements of their members
- (iii), published material about the individual in professional or major media
- (iv), participation as a judge of the work of others in the same of allied field
- (v), alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field
- (vi), evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media
- (vii), display of her work in the field at artistic exhibitions or showcases
- (viii), evidence that the individual has performed in a leading or critical role for organizations or establishments that have a distinguished reputation
- (ix), high remuneration for services

The Director concluded the Petitioner met two of the criteria, pertaining to judging the work of others and authorship of scholarly articles. On appeal, the Petitioner withdraws the criteria of membership and published material about the individual but asserts that his evidence satisfies the applicable legal requirements to satisfy the other claimed criteria.

We will not disturb the Director's determinations regarding the Petitioner's judging the works of others and authorship of scholarly articles. But for the reasons discussed below, we agree with the Director that the Petitioner has not satisfied the other claimed criteria.

A. Evidentiary Criteria

> *Documentation of the individual'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)

To satisfy this criterion, the Petitioner must demonstrate that he has received lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. When determining whether an individual has received lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor, we consider factors such as: the criteria used to grant the awards or prizes; the national or international significance of the awards or prizes in the field; and the number of awardees or prize recipients, as well as any limitations on competitors. *See generally* 6 *USCIS Policy Manua*l F.2 appendix, https://www.uscis.gov/policymanual.

The Director determined that the Petitioner did not establish that any of the awards qualify as nationally or internationally recognized prizes or awards for excellence in the field. We agree with that determination.

On appeal, the Petitioner states that he was recognized by appearing on the 2008 Saude Analise's list of the '[redacted]" He provided a printout of the magazine article awarding him the title, and explained the candidates are selected by other doctors who have the scientific knowledge necessary to judge their colleagues in the industry. The Petitioner also provided an article, dated [redacted] 2013, from SEMPR that stated the Yearbook Analise Saude 2013 had published a list of 2,000 doctors who had been chosen as "most admired" in their specialties by their medical colleagues. However, the record does not fully explain, or present evidence, regarding the selection processes. Nor does it contain sufficient information or supporting evidence about the competition that would support the Petitioner's claim that these awards should be considered a national or international award for excellence in the field of gastroenterology. Absent, for example, information regarding the number of competitors in the Petitioner's category, or evidence of how the medical colleagues select their top doctors, or evidence of the level of recognition associated with this award, we cannot find that the Petitioner has satisfied each element of the criterion.

For the reasons stated above, the Petitioner does not meet 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).

The primary requirements here are that the Petitioner's contributions in their field were original and rise to the level of major significance in the field as a whole, rather than having major significance to a project or to an organization. *See Amin v. Mayorkas*, 24 F.4th 383, 394 (5th Cir. 2022)(citing *Visinscaia v. Beers*, 4 F. Supp. 3d 126, 134 (D.D.C. 2013)). The regulatory phrase "major significance" is not superfluous and, thus, it has some meaning. *Nielsen v. Preap*, 139 S. Ct. 954, 969 (2019) (finding that every word and every provision in a statute is to be given effect and none should needlessly be given an interpretation that causes it to duplicate another provision or to have no consequence). 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 these elements to meet the plain language requirements of this criterion.

The Petitioner contends that his published work, funded research, and peer reviewed articles in scholarly journals show the significance of his contributions to his field. On appeal, the Petitioner submits articles he authored and a citation record that indicated his work was cited 50 times.

The Petitioner contends his articles were published in leading journals. Although we acknowledge the achievement of publishing articles in journals, what is lacking is the Petitioner's account of how that equates to this criterion's requirements. While being published in prestigious journals certainly suggests the Petitioner's research is valuable, it does not necessarily mean that his valued research has significantly contributed to the field as a whole. Publications alone are not sufficient under 8 C.F.R. § 204.5(h)(3)(v) absent evidence that they were of major significance. The Petitioner did not establish that publication in a popular or highly ranked journal alone demonstrates a contribution of major significance in the field.

His arguments regarding the collective or total number of citations to his published work also fails to meet this criterion's requirements. The Petitioner focuses on his total number of citations, but not on any particular single article while also comparing that recognition to other leading articles in his field. In general, the comparison of a Petitioner's cumulative citations to those of others in the field in an attempt to draw a conclusion of their comparative impact in the field, is often more appropriate within a final merits determination after they have satisfied at least three regulatory criteria. Such a comparison may assist in determining whether the record shows sustained national or international acclaim and demonstrates that they are among the small percentage at the very top of the field of endeavor.

We view a comparison of citations to individual scientific articles to be more relevant for this criterion to establish the overall field's general view of a contribution of major significance. *See generally* 6 *USCIS Policy Manual, supra,* F.2 (Appendices); *see also Visinscaia*, 4 F. Supp. 3d at 134–35 (upholding a finding that a ballroom dancer had not met this criterion because she did not corroborate her impact in the field as a whole). For example, he did not provide the citation rates of other recognized contributions of major significance within the field for comparison purposes. Nor has the Petitioner shown that a notable number of the citing authors placed unusual reliance on his work. The Petitioner also did not establish what an average or high citation rate is within his specialized field.

Even considering the Petitioner's appellate claims under this criterion, we still conclude he has not shown that his work has resulted in a marked impact within the field. In the end, the Petitioner has not submitted evidence that meets the plain language requirements of this criterion.

> *Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.* 8 C.F.R. § 204.5(h)(3)(vii).

The plain language of this criterion limits it to artistic exhibitions and showcases rather than scientific ones. The Petitioner claimed his evidence qualified as comparable evidence for consideration. The regulation at 8 C.F.R. § 204.5(h)(4) allows for comparable evidence if the listed criteria do not readily apply to a petitioner's occupation. *See generally* 6 *USCIS Policy Manual, supra,* F.2 (Appendices).

On appeal, the Petitioner contends that doctors do not have their work displayed in artistic exhibitions or showcases because it does not apply to that line of work. Instead, the Petitioner states that comparable evidence for this criterion is published work presented and exhibited in scientific meetings, medical symposiums and conventions. With regard to display of the person's work, the evidence must demonstrate that the venues were "artistic" consistent with this regulatory criterion.

For instance, a scientific researcher who displays his work at a conference, symposium, workshop, or meeting would not meet the requirements of this criterion. *See Kazarian v. USCIS*, 596 F.3d 1115, 1122 (9th Cir. 2010) (finding that self-publishing a textbook, lecturing at a community college, and presenting at conferences were not displays at artistic exhibitions or showcases consistent with the relevant regulatory language). Accordingly, the Petitioner did not demonstrate that he fulfills this criterion, including through the submission of comparable evidence.

> *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).

To meet the plain language requirements of this criterion, a petitioner must establish that they have performed in either a leading or critical role, and that the role has been for an organization or establishment (or a division or department of an organization or establishment) having a distinguished reputation. A leading role should be apparent by its position in the overall organizational hierarchy and through the role's matching duties. A title, with appropriate matching duties, can help to establish if a role is or was, in fact, leading. *See generally* 6 *USCIS Policy Manual, supra,* F.2(B)(2)(Appendices). If a critical role, the evidence must establish that a petitioner has contributed in a way that is of significant importance to the outcome of the organization or establishment's activities. It is not the title of the petitioner's role, but rather the petitioner's performance in the role that determines whether the role is or was critical. In addition, this criterion requires that the organization or establishment be recognized as having a distinguished reputation. USCIS policy reflects that organizations or establishments that enjoy a distinguished reputation are "marked by eminence, distinction, or excellence." *See generally* 6 *USCIS Policy Manual*, *supra*, F.2. (citing to the definition of *distinguished*, *Merriam-Webster*, https://www.merriam-webster.com/dictionary/distinguished). The Petitioner must submit evidence satisfying all of these elements to meet the plain language requirements of this criterion.

Letters from employers, attesting to an employee's role in the organization, must contain detailed and probative information that specifically addresses how the person's role for the organization or establishment was leading or critical. *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2 appendix. The Petitioner's do not.

The Petitioner stated that he currently holds a critical position at [redacted] in Florida as a research fellow. He further explained that [redacted] is consistently ranked as one of the best hospitals in the United States. [redacted] Manager and Research Program/MDT Coordinator, stated that a research fellow in [redacted] colorectal surgery department is a critical position as they conduct clinical research, formal study meetings, administrative meetings, and a weekly formal course in clinical research methodology. She also explained how the Petitioner designed studies and wrote manuscripts and conducted important research that assisted in the continued advancement of the industry overall.

In addition, the Petitioner submitted a letter from [redacted] of the Digestive Disease Center and Chair of the Department of Colorectal Surgery. [redacted] stated that [redacted] invited the Petitioner to relocate in the United States and collaborate and contribute further developing medical knowledge in his area of expertise. He further indicated the Petitioner has been a "highly active member of important research projects," and the information derived from these projects will provide [redacted] with data for future studies and help obtain further grants and awards.

On appeal, the Petitioner contends he plays a leading role at [redacted] as noted in the support letters. Although the two letters from [redacted] confirm the importance of the Petitioner's contributions as a research fellow, they do not establish that he performed a leading or critical role for [redacted] as a whole, such as by showing he influenced its overall reputation or status, or was responsible for the success of the organization. While the Petitioner worked on research projects to enhance [redacted] program, and thereby supported its mission, he did not provide sufficient documentary evidence to show that his duties and responsibilities were critical to the greater organization. The two letters do not describe with sufficient detail how the Petitioner himself played a critical role in the successes [redacted] enjoyed. Although Mr. [redacted] stated that the Petitioner's involvement in research projects contributed to new data and possibly more funding for future projects, he did not provide specific examples. Every employee fulfills some kind of role that benefits their employer in some way. Here, the Petitioner has not established that his work for [redacted] was critical to the organization itself, rather than to the outcome of specific, limited tasks or projects.

On appeal, the Petitioner further contends that he played a critical role as co-founder of a medical practice in Brazil, the [redacted] (IPC). The Petitioner submitted a letter from IPC's Technical Director confirming that from 1982 to 2018 the Petitioner was IPC's founder and chief of staff, attending physician, gastrointestinal surgeon, and researcher. While it does appear as though the Petitioner played a leading role as founder and chief of staff at IPC, the Petitioner did not submit sufficient evidence that IPC enjoys a distinguished reputation.

On appeal, the Petitioner contends that INBRAP, the Brazilian Institute of Public Opinion and Research, awarded the practice [redacted] in 2005 for the category of Ambulatory Care Services. According to a print-out from INBRAP's website, the award is given annually to "companies, entities and professionals that really make a difference...." It also stated that the award is considered one of the most important "marketing" awards. Without further information, we cannot determine that a company with this award should be considered one with a distinguished reputation.

In summary, the evidence provided does not sufficiently demonstrate the Petitioner performed in a leading or critical role for organizations or establishments that have a distinguished reputation. The letters considered above primarily contain bare assertions of acclaim and vague claims of contributions without specifically identifying contributions and providing specific examples of how those contributions rose to a level consistent with major significance in the field. Merely repeating the language of the statute or regulations does not satisfy the Petitioner's burden of proof. *See Fedin Bros. Co., Ltd. V. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). Similarly, USCIS need not accept primarily conclusory assertions. *See 1756, Inc. v. The U.S. Att'y Gen.*, 745 F. Supp. At 17.

For these reasons, the Petitioner has not established that he meets 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).

To meet this criterion, a petitioner must demonstrate that their salary or remuneration is high relative to the compensation paid to others working in the field in similar positions and geographic locations. *See generally* 6 *USCIS Policy Manual, supra*, at F(2) appendix (stating that it is the petitioner's burden

to provide geographical and position-appropriate evidence to establish that a salary is relatively high); *see also Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994) (considering a professional golfer's earnings versus other PGA Tour golfers); *Skokos v. U.S. Dept. of Homeland Sec.*, 420 F. App'x 712, 713-14 (9th Cir. 2011) (finding salary information for those performing lesser duties is not a comparison to others in the field); *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 burden is on the petitioner to provide appropriate comparative evidence. Examples may include, but are not limited to, geographical or position-appropriate compensation surveys. Persons working in different countries should be evaluated based on the wage statistics or comparable evidence in that country, rather than by simply converting the salary to U.S. dollars and then viewing whether that salary would be considered high in the United States.

The Petitioner provided a letter from the senior accountant in charge of his personal and corporate tax returns in Brazil. The letter stated the [redacted] is solely owned by the Petitioner and the company was structured to register the income from the Petitioner's professional activities as a doctor. He explained the Petitioner has full control of the company and the company's profits are reported as regular income on the Petitioner's individual income tax forms. The Petitioner also provided copies of his 2010-2019 Brazilian personal income tax returns. The Petitioner did not provide a full translation of these documents but instead provided partial translations. Any document in a foreign language must be accompanied by a full English language translation. 8 C.F.R. § 103.2(b)(3). The translator must certify that the English language translation is complete and accurate, and that the translator is competent to translate from the foreign language into English. *Id.* Because the Petitioner did not submit properly certified English language translations, we cannot meaningfully determine whether the translated material is accurate and thus supports the Petitioner's claims.

Nor did the Petitioner provide any documentation regarding the company to corroborate the claim that the Petitioner owns it. Without information of the company's ownership and without a full translation of his tax documents, it is impossible to determine if the Petitioner's full income arose from his work as a doctor. It is not clear if the Petitioner's income tax return shows the income he received as the owner, or as a doctor. Without sufficient evidence of the Petitioner's compensation as a physician, we are unable to compare the Petitioner's income with the submitted wage data.

We find that the evidence in the record is insufficient to demonstrate that he has commanded a high salary in relation to others in his field. Accordingly, for the reasons discussed above, we conclude that the Petitioner's evidence did not establish that he satisfies 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. We also need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20, or render a determination on the

issue of whether the Petitioner's entry will substantially benefit prospectively the United States. Accordingly, we reserve these issues.[1]

Nevertheless, we have reviewed the record in the aggregate and concluded 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 those progressing toward the top. *Price*, 20 I&N Dec. at 954 (Assoc. Comm'r 1994) (concluding that even major league level athletes do not automatically meet the statutory standards for classification as an individual of "extraordinary ability,"); *Visinscaia*, 4 F. Supp. 3d at 131 (internal quotation marks omitted) (finding that the extraordinary ability designation is "extremely restrictive by design,"); *Hamal v. Dep't of Homeland Sec. (Hamal II)*, No. 19-cv-2534, 2021 WL 2338316, at *5 (D.D.C. June 8, 2021) (determining that EB-1 visas are "reserved for a very small percentage of prospective immigrants"). *See also Hamal v. Dep't of Homeland Sec. (Hamal I)*, No. 19-cv-2534, 2020 WL 2934954, at *1 (D.D.C. June 3, 2020) (citing *Kazarian,* 596 at 1122 (upholding denial of petition of a published theoretical physicist specializing in non-Einsteinian theories of gravitation) (stating that "[c]ourts have found that even highly accomplished individuals fail to win this designation")); *Lee v. Ziglar*, 237 F. Supp. 2d 914, 918 (N.D. Ill. 2002) (finding that "arguably one of the most famous baseball players in Korean history" did not qualify for visa as a baseball coach). 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 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). The record does not contain sufficient evidence establishing that he is among the upper echelon in his field.

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.

[1] *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, n.7 (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).