U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 23091359

Date: AUG. 17, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a fire prevention specialist, 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 although the record established that the Petitioner satisfied the initial evidentiary requirements, it did not establish, as required, that the Petitioner has sustained national or international acclaim and is an individual in the small percentage at the very top of the field. 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. These individuals must seek to enter the United States to continue work in the area of extraordinary ability, and their entry into the United States will substantially benefit 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 their achievements in the field through a one-time achievement in the form of a major, internationally recognized award. Or the petitioner can submit evidence 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.

Once a petitioner has met the initial evidence requirements, the next step is a final merits determination, in which we 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

Documents in the file indicate that the Petitioner worked for the [redacted] Fire Brigade [redacted] from 1997 to 2014, in such capacities as senior engineer and deputy director of the [redacted] Fire Prevention Department and as chief of the [redacted] Fire Battalion. The Petitioner joined the [redacted] Fire Protection Association [redacted] in 2015, and was elected as one of its vice presidents in 2018. Since 2015, the Petitioner has spent much of his time in the United States, first as the J-2 spouse of a J-1 nonimmigrant exchange visitor, then as the F-2 spouse of an F-1 nonimmigrant student. The Petitioner seeks to develop a business involving portable aerosol fire extinguishers.

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 claimed to have satisfied four of these criteria, summarized below:

- (ii), Membership in associations that require outstanding achievements;
- (iv), Participation as a judge of the work of others;
- (vi), Authorship of scholarly articles; and
- (viii), Leading or critical role for distinguished organizations or establishments.

The Director concluded that the Petitioner had satisfied the requirements of three criteria, relating to memberships, scholarly articles, and leading or critical roles.

In the denial notice, the Director stated that, although the Petitioner had satisfied three of the initial criteria at 8 C.F.R. § 204.5(h)(3), a final merits determination did not show that the Petitioner had earned sustained national or international acclaim. On appeal, the Petitioner contends: "Fulfillment of the three categories is generally sufficient to meet the burden of proving Extraordinary Ability." Meeting the initial criteria, however, does not establish a presumption of eligibility. The purpose of the final merits determination is to evaluate the quality of the evidence submitted to meet the criteria and to determine whether the record, as a whole, supports approval of the petition. *See generally* 6 *USCIS Policy Manual* F.2(B)(2), https://www.uscis.gov/policy-manual.

Below, we will evaluate whether the Petitioner 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.

In denying the petition, the Director concluded that the Petitioner "is revered as an outstanding talent in the field of fire prevention; however, he has not established that [his] success from 2010 and 2014 contribute[s] to a finding of the required sustained national or international acclaim." The Director stated:

> According to the petition and supporting documents, the beneficiary entered the field of Fire Prevention 13 years ago. . . . The beneficiary decided to retire from the fire department in July 2014; however planning to join the industry organization [redacted] an international technological and educational organization, at an appropriate time, so as to deepen exchanges with peers in the U.S.

On appeal, the Petitioner asserts that the Director's decision is "lacking in analysis" and "has not accurately stated the facts." The Petitioner alleges two specific factual errors. First, the Petitioner disputes the assertion that the Petitioner "entered the field of Fire Prevention 13 years ago," stating that he "had served at a high level for 20 years in the field." The Director's reference to "13 years" appears to have been a biographical detail rather than a specific ground for denying the petition.

Regarding the other disputed claim, the Petitioner asserts that the Director "stated 'The Beneficiary decided to retire from the fire department in July 2014' thus sounding as if he were fully retired and not active in his career. Again, this information is not accurate as Petitioner maintains an active role in the Profession at the top tier." But the Director did not state that the Petitioner had completely retired from the field of fire safety and prevention. Rather, the Director stated that the Petitioner "retire[d] *from the fire department* in July 2014," referring to the Petitioner's departure from the [redacted] The Petitioner's own exhibits document this fact. Exhibit 69 of the Petitioner's initial submission, certifying the Petitioner's election to the vice presidency of the [redacted], specifically states that the Beneficiary "retired from the Service of Fire Prevention in July 2014." The Petitioner resubmits this document on appeal. The Director's accurate reference to information in the record does not indicate that the Director erred in denying the petition.

The record indicates that the Petitioner has held high-ranking positions in [redacted] China, mostly in the [redacted] Nevertheless, the record also establishes that the [redacted] is a *municipal* entity. Likewise, the name of the [redacted] indicates a connection with the city of [redacted] rather than an organization with national or international reach. The Petitioner's evidence predominantly focuses on his stature in [redacted] and the surrounding [redacted] Region.

For example, the Petitioner belonged to a [redacted] Safety Production Expert Panel." A published article about the panel's formation confirmed that a local authority, "the [redacted] Security Committee," convened the panel. Nearly every member of that panel was employed by an entity with the word [redacted] in its name, consistent with a local, municipal venture. Similarly, the

[1] *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(2) (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).

Petitioner sat on review panels for projects that took place in [redacted] and fellow panelists were from entities in [redacted]

The [redacted] bylaws state that an individual must show "major influence in the field" to qualify for election as a vice president of the association. A letter from the president of the [redacted] states: "The Executive Council of the Association nominated [the Petitioner] . . . for the position of Vice President based on" such factors as his service on the [redacted] Safety Production Committee," his involvement in "the promulgation of [redacted] *Regulations on Fire Control*," and his service on review panels which, the record shows, have been convened at the municipal level in [redacted] The Petitioner's election to a leadership position in a municipal association is consistent with local recognition.

The Petitioner wrote six scholarly articles documented in the record. The Director acknowledged that these articles satisfy the wording of the criterion at 8 C.F.R. § 204.5(h)(3)(vi), but the publication of those articles does not inherently reflect or result in sustained national or international acclaim. Information about the circulation of the journals in which the articles appeared, or the reputations of the publishers, does not establish the impact of individual articles or the acclaim of the authors of those articles. Most of the Petitioner's articles appeared in journals with [redacted] in the title, and the Petitioner has not established that the articles attracted wider attention or significantly influenced the field at a national or international level. A "goodly number" of citations of a published article are one possible gauge of the article's impact. *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2 appendix. Here, the Petitioner's most-cited article received six citations since its publication in December 2006, more than 13 years before the Petitioner filed the petition in April 2020. The Petitioner did not show that this citation rate demonstrates a level of recognition and influence consistent with national or international acclaim.

The Petitioner has not shown that he has earned acclaim among fire prevention specialists outside of [redacted], or that his work in [redacted] has been adopted on a national or international scale. The Petitioner submitted examples of "National Standards," but he did not show that he played a role in their development. Rather, the Petitioner apparently submitted the "National Standards" to show that some of the individuals who developed those standards also served on panels with him. The Petitioner's collaboration with such individuals, however, is not evidence of his own wider recognition. The Petitioner must show that he has earned sustained national or international acclaim, not that he has worked with those who have done so.

The Petitioner referred to "fire-resistant glasses, which are manufactured according to the standards . . . formulated by [the Petitioner] and others, have a leading position in the industry." But we can find no documentary evidence in the record to establish the Petitioner's role in these standards or the products' "leading position in the industry." The ambiguous wording does not specify whether the Petitioner played a role in developing the fire-resistant glass itself.

The Petitioner is named as an inventor on "4 national patents [in China] for fire protection products." The Petitioner submitted a document identifying four patent applications; from the submitted translations, it is not clear whether the applications were approved and the patents awarded. The awarding of patents does not "demonstrate[] that the [Petitioner] has been at the top of his field." The Petitioner did not establish that China awards patents based on the significance of a given invention or innovation, rather than its originality. Also, he did not establish that the patented inventions have actually gone into commercial production, or that they have had a significant impact on fire prevention in China.

The Director took evidence of the [redacted] overall reputation into consideration, granting that the Petitioner had performed in a leading or critical role for an organization or establishment with a distinguished reputation. *See* 8 C.F.R. § 204.5(h)(3)(viii). But absent additional evidence, the overall reputation of such an organization does not necessarily establish national or international acclaim for individual high-ranking officials within that organization. We note that some of the evidence submitted to establish the [redacted] reputation relates to events that occurred after the Petitioner left the [redacted] in 2014, such as participation in an international drill in 2018.

The Petitioner asserts that, out of about 170,000 "fire prevention troops" in China, only about 800 hold national certification as senior engineers. One of the Petitioner's past collaborators asserted that the Beneficiary ranked in the top 100 nationally in the qualifying test for that title.[2] The Petitioner states that, as one of that top 100 out of 170,000, he ranks among the small percentage at the very top of his field. The Petitioner has not shown that there is a valid comparison between the cited figures. For instance, the Petitioner has not shown that all 170,000 troops took the certification examination, or that "senior engineer" is the highest attainable rank for "fire prevention troops." Evidence showing that only a small fraction of "fire prevention troops" are "senior engineers" does not suffice to establish that the title of "senior engineer" reflects, or results in, sustained national or international acclaim.

The Petitioner has not shown that his local reputation in [redacted] has expanded into acclaim at the national or international level as the statute requires. *See* section 203(b)(1)(A)(i) of the Act.

III. CONCLUSION

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 established significant recognition in [redacted] and its capital city of [redacted] but he has not shown that the recognition of his work has reached the level of 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 Petitioner has not demonstrated eligibility as an individual of extraordinary ability. We will therefore dismiss the appeal.

ORDER: The appeal is dismissed.

[2] The Petitioner also asserted that he was the top scorer in [redacted] but this is a local distinction rather than a national or international one as the statute and regulations require.