U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 25693008

Date: DEC. 1, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a professor of English, 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 Director further concluded that the Petitioner did not establish that he satisfied the regulatory requirement at 8 C.F.R. § 204.5(h)(5) which requires, in pertinent part, "clear evidence that the [individual] is coming to the United States to continue to work in the area of expertise." 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

Under section 203(b)(1)(A) of the Act, an individual is eligible for the extraordinary ability classification if: (i) they have extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and their achievements have been recognized in the field through extensive documentation; (ii) they seek to enter the United States to continue work in the area of extraordinary ability; and (iii) their 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 may demonstrate

international recognition of their achievements in the field through a one-time achievement (that is, a major, internationally recognized award). Absent such an achievement, a petitioner must provide sufficient qualifying documentation demonstrating that they meet at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

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 Director determined that the Petitioner did not provide sufficient documentation to establish his eligibility under any of the ten regulatory criteria found at 8 C.F.R. § 204.5(h)(3).[1] Moreover, citing to 8 C.F.R. § 204.5(h)(5), the Director concluded that the Petitioner had not established "by clear evidence that [he] is coming to the United States to continue work in the area of expertise. . . ." because the Petitioner's area of expertise was psychoanalysis, which conflicted with his stated intention to teach and perform research in the field of English language and literature.

On appeal, the Petitioner provides a statement, explaining that his doctorate degree is in English and that he intends to teach English language and literature, and that his research will benefit the United States by using psychological theories found in literature to improve the mental health of Americans. Furthermore, the Petitioner asserts that contrary to the Director's conclusion that his field of expertise is psychology, his intention is to teach English language and literature. The Petitioner also explains that he is submitting new recommendations letters that make clear he will teach in the field of English language and Literature and that the authors of the letters previously submitted stating that he was going to teach "trauma studies" were not aware of his future plans in the United States, and only "his inclination [] towards psychology." Nonetheless, the Petitioner has provided contradictory information that has not been sufficiently resolved. For example, the cover letter accompanying his petition, and signed by him on May 13, 2022, states he will continue his research in the area of "trauma studies and psychoanalysis." Furthermore, other documents also claim that he has a doctorate in trauma studies, including the printout of a portion of the Petitioner's own book in the publication, Scholars' Press, which states [redacted] qualified his doctorate on Trauma Studies in 2018 from [redacted] University, India. . . . His interests include psychoanalysis proposed by [Freud], [Lacan], [Jung], and [Adler]." A petitioner must resolve inconsistencies in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Unresolved material inconsistencies may lead us to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit. *Id.*

[1] We acknowledge the Director's typographical error regarding the criterion for authorship of scholarly articles in the field, in professional or major trade publications or other major media and note that the Petitioner addresses this criterion on appeal.

Therefore, we agree with the Director that the Petitioner has not provided sufficiently clear evidence that he is coming to the United States to continue to work in his area of expertise as required by 8 C.F.R. § 204.5(h)(5).

On appeal, the Petitioner again asserts that he meets the criteria at 8 C.F.R. § 04.5(h)(3)(iii),(iv), and (vi).[2]

> *Evidence of the person'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 that the evidence did not meet the plain language of the criterion because the reviews he conducted were in the field of psychology, and not in English Language or Literature. On appeal, the Petitioner disputes the Director's conclusion and submits documentation that he asserts establishes his role as an adviser and evaluator of doctoral students in his field.

A petitioner may be able to meet this criterion by "serving as a member of a Ph.D. dissertation committee that makes the final judgment as to whether a candidate's body of work satisfies the requirements for a doctoral degree, as evidenced by departmental records." *See generally* 6 *USCIS Policy Manual* F.2(B)(1)(criterion 4), https://www.uscis.gov/policymanual. Moreover, a petitioner must show that the individuals he is judging are in the same or allied field. *Id.* The Petitioner's evidence does not establish this criterion for several reasons. First, the individuals he was judging appear to be students, and not yet professionals in the "same or allied field." Second, while we acknowledge that the Petitioner was invited to be a panelist at the "Department Doctoral Board" and on the "Research Advisory Committee" for Ph.D. pre-submission evaluation, his role was as an advisor to students seeking a Ph.D. rather than as a judge making a "final judgement" about the individual's satisfaction of the requirements for a doctoral degree.

The provided evaluations show that his role was advisory in nature and not as a judge making a final determination regarding the candidate's eligibility for a Ph.D. For example, his evaluation comments for one student shows that he was advising her to "unearth uniqueness in the area of proposed topic." Another evaluation shows him advising the student to "narrow down the theoretical framework to four theories which he would apply on the criminal characters depicted in the anthology to comprehend the depth of crime." We acknowledge that he appears to be a faculty member and that in this role, he has been asked to advise students seeking a Ph.D., however the evidence is insufficient to show that he has participated as a judge of the work of others in the same or allied field for the above stated reasons. *Matter of Chawathe*, 25 I&N Dec. at 375-76 (AAO 2010).

As such, he has not met this criterion.

Because the Petitioner has not demonstrated his eligibility under at least one criterion and would therefore be unable to reach the requisite minimum of at least three criteria under step one of *Kazarian's* analytical framework, we decline to reach and hereby reserve the Petitioner's appellate

[2] As the Petitioner does not address the criteria at 8 C.F.R. § 204.5(h)(3)(ii) and (v) regarding membership and original contributions, we consider them waived. *See, e.g., Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (*citing Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012)) (an issue not raised on appeal is considered waived).

arguments regarding the two remaining claimed criteria at 8 C.F.R. § 204.5(h)(3)(iii)[3] and (vi). *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is 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).

While we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20, we note that the Petitioner seeks a highly restrictive visa classification. We have 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 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).

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.

ORDER: The appeal is dismissed.

[3] We do note, however, that the article by [redacted] incorrectly states that the Petitioner obtained a Ph.D. in Trauma Studies ('[redacted] earned his doctorate in Trauma Studies in 2018") and that he has contributed to the field of Trauma Studies through his publications. As above, this information conflicts with the Petitioner's own evidence that he obtained a Ph.D. in English in 2018, as well as the education evaluation he provided to show he has a Ph.D. in English. We also note that the article by [redacted] was inexplicably published in the *Journal of Cardiovascular Disease Research*. The Petitioner should address these inconsistencies in any future filings.