U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 25692883

Date: FEB. 8, 2023

Appeal of Texas Service Center Decision

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

The Petitioner seeks classification as an alien 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 Texas Service Center Director denied the Form I-140, Immigrant Petition for Alien Workers (petition), concluding the Petitioner did not establish that he had a major, internationally recognized award, nor did he demonstrate that he met at least three of the ten regulatory criteria. The matter is now before us on appeal. The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (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

To qualify under this immigrant classification, the statute requires the filing party demonstrate:

- The foreign national enjoys extraordinary ability in the sciences, arts, education, business, or athletics;
- They seek to enter the country to continue working in the area of extraordinary ability; and
- The foreign national's entry into the United States will substantially benefit the country in the future.

Section 203(b)(1)(A)(i)–(iii) of the Act. 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 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 Amin v. Mayorkas*, 24 F.4th 383, 394 (5th Cir. 2022).

II. ANALYSIS

The Petitioner is a business consultant operating in the area of human resources. He claims he has made a profound impact and advancements in the personnel management space in Russian-speaking countries and the business culture among post-Soviet countries gradually moving "toward more efficient, as well as more humane and ethical operations." He describes his field of endeavor as "the field of personnel management consulting."

Because the Petitioner has not indicated or established that he has 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). Before the Director, the Petitioner claimed he met five of the regulatory criteria. The Director decided the Petitioner did not satisfy any of the criteria and he had specifically failed to satisfy the criteria associated with prizes or awards, published material, original contributions, leading or critical role, or high salary or remuneration. On appeal, the Petitioner maintains that they meet the same five evidentiary criteria. After reviewing all the evidence in the record, we conclude the Petitioner has not demonstrated eligibility for this highly restrictive immigrant classification.

The Petitioner first takes issue with the Director's application of *Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988) to his case. The Petitioner alleges the Director applied this decision wholesale to documentation under several criteria, but it appears the Director only relied on this decision's findings as it relates to recommendation letters he provided under the contributions of major significance criterion. The Director indicated they considered the letters, but that such correspondence should be supported by more probative material in the record, and that the agency is ultimately responsible for determining whether a foreign national is eligible for a benefit.

We also note that expert opinion testimony does not purport to be evidence as to fact and we should evaluate the content of letters to decide whether they adequately support the foreign national's eligibility. *See id.* at 795; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008). While we do not agree that the Director applied *Matter of Caron International* throughout their decision, we do observe that they did not explain how some of the letters were not in accord with other evidence in the record, or why they found them questionable, which might serve to assuage the Petitioner's objections. At any rate, we will address relevant evidence within this decision.

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 provided evidence of his receipt of the [redacted] The issuing entity was the [redacted] of the Russian Federation, and he received this accolade in 2017. The Director's analysis under this criterion all points to the evidence not satisfying the regulatory requirements, but at the end of the analysis, the Director indicates "the submitted evidence meets this criterion." Because the Director's conclusion does not align with the analysis, this appears to be a typographical error and we will presume they did not grant this criterion and we will make our own assessment.

This criterion contains several evidentiary elements, all of which must be met to satisfy the regulation. According to the plain language of the regulation the evidence must establish: (1) the foreign national is the recipient of the prizes or the awards; (2) those accolades are nationally or internationally recognized; and (3) each prize or award is one for excellence in the field of endeavor.

The Petitioner was the recipient of this award and that portion of the requirements are satisfied. However, we question whether this accolade is nationally or internationally recognized. The Petitioner asserts that because the award was issued by an entity within the Russian government it should be considered nationally or internationally recognized. However, the fact that it was issued by an agency of the national government does not prove that the award meets the regulatory requirements. The record lacks evidence demonstrating its issuance was reported on publicly, and it does not reveal that any recognition extended beyond the [redacted]

The Petitioner also compares this award to one issued by the U.S. government. Despite the fact that the government issues awards or decorations, that simple fact does not transform it into a nationally or internationally recognized item. National and international recognition does not necessarily result from the entity that issued the accolade, but through the awareness of it in the eyes of the field nationally or internationally. This recognition should be evident through specific means; for example, but not limited to, national or international-level media coverage. As a result, we do not agree with the Petitioner that U.S. government-issued accolades automatically conforms to the caliber of awards this criterion demands.

Accordingly, the Petitioner has not submitted evidence that meets the plain language requirements of this criterion.

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).

This criterion contains multiple evidentiary requirements the Petitioner must satisfy. First, the published material must be about the Petitioner and the contents must relate to the Petitioner's work in the field under which he seeks classification as an immigrant. The published material must also appear in professional or major trade publications or other major media. Professional or major trade

publications are intended for experts in the field or in the industry. To qualify as major media, the Petitioner must establish the circulation statistics are high relative to other similar forms of media.

The final requirement is that the Petitioner provide each published item's title, date, and author and if the published item is in a foreign language, the Petitioner must provide a translation that complies with the requirements found at 8 C.F.R. § 103.2(b)(3). The Petitioner must submit evidence satisfying all of these elements to meet the plain language requirements of this criterion.

The Petitioner provided several articles he characterizes as professional or major trade publications. The Director determined that the Petitioner did not meet the requirements of this criterion expressing doubts about the objective nature of much of the evidence. We share some of the Director's concerns relating to portions of the Petitioner's evidence under this criterion. For instance, even though businessinsider.com is a form of major media, the article the Petitioner provided from this outlet reflects it is a [redacted] A review of that resource's affiliated website reveals that "PRWeb is the leader in online news distribution and publicity. It offers various online press release packages, enabling users of all kinds to increase the web visibility of their news, reach new audiences, stand out in search, and drive traffic to their websites." *About Us*, Cision PRWeb (Feb. 3, 2023), https://service.prweb.com/about/.

Even if we set those concerns aside, the Petitioner states the articles appeared in professional or major trade publications. U.S. Citizenship and Immigration Services (USCIS) policy reflects that circulation figures for other publications are necessary for comparative purposes to enable us to decide whether the resources the Petitioner provides are one of the qualifying publication types. *See generally* 6 *USCIS Policy Manual* F.2 (Appendices), https://www.uscis.gov/policymanual (noting that "[e]vidence of published material in professional or major trade publications or in other major media publications about the alien should establish that the circulation (on-line or in print) is high compared to other circulation statistics. . . ."). As the record does not contain circulation statistics in which we could compare to their provided resources, the Petitioner has not demonstrated eligibility under 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).

The Petitioner initially provided his foreign tax documents and consulting contracts. The Director found that material did not satisfy the regulation's requirements and in response to their request for evidence (RFE) the Petitioner asserted that he earns a certain hourly rate as a business consultant in the United States, but he did not identify the evidence that might corroborate those claims. He also provided two articles positing that his U.S.-based earnings were significantly higher than the average hourly earnings for a business consultant in the articles.

The Petitioner further agreed with the proposition that comparing his total earnings, as reported in his foreign tax returns, with salaries of other management consultants would not provide a fair assessment since his total earnings also included his compensation as a business owner. Notably, the Petitioner conceded he was unable to locate "any market evidence to show how much management consultants earn on an hourly basis in" his home country. Finally, after converting his foreign earnings to U.S. dollars, the Petitioner compared those figures with the average hourly earnings listed in the articles.

Those articles contained salary information for management consultants in the United States. The Director determined that the Petitioner did not meet the requirements of this criterion.

On appeal, the Petitioner maintains his eligibility under this provision. He claims he established his hourly earnings rate in the United States through a copy of his Form 1040-NR, U.S. Nonresident Alien Income Tax Return for 2020. We note he did not identify evidence demonstrating these tax forms were actually filed and determined to contain accurate figures, nor did he specify what other material demonstrates what he earned in the United States as a business consultant that might verify all his U.S earnings in 2020 were solely for that service.

We further note that USCIS policy reflects that we should not evaluate foreign country earnings, convert those earnings to U.S. dollars, and use that as a means of comparison. *See generally* 6 *USCIS Policy Manual*, *supra*, F.2 (Appendices). As a result, we do not agree with the method the Petitioner proposed in its RFE response. Within the appeal, the Petitioner continues to state his hourly earnings rate in the United States, but he again does not specify what evidence corroborates those claims, even though he filed the petition in December 2021.

Ultimately, the Petitioner provided evidence of his earnings in Russia, but he was unable to locate data in which we could compare those earnings. And for his U.S.-based earnings, the articles reflect average hourly earnings for business consultants. But the plain language of the regulation requires the Petitioner to establish his salary is high—or remuneration is significantly high—when compared to others in the field. As such, average statistics as a comparison do not meet this requirement. *Strategati, LLC v. Sessions*, No. 3:18-CV-01200-H-AGS, 2019 WL 2330181, at *7 (S.D. Cal. May 31, 2019) (agreeing that average salary levels do not allow for an appropriate basis for comparison in determining a high salary "in relation to others in the field"). The evidence simply reflected that the Petitioner's purported hourly earnings were higher than the average earnings of business consultants as a whole rather than demonstrating that the Petitioner commanded high or significantly high earnings in relation to others in the field.

Finally, the record contains two letters claiming what the top consultants earn in the United States and in Russia. USCIS policy provides: "the burden is on the petitioner to provide appropriate evidence. Examples may include, but are not limited to, geographical or position-appropriate compensation surveys and organizational justifications to pay above the compensation data." Because the salient claims within these letters are not corroborated by other evidence in the record, we consider them to be inadequate evidence to preponderantly demonstrate the Petitioner's eligibility here. USCIS is not required accept primarily conclusory assertions as adequate evidence. *Fano v. O'Neill*, 806 F.2d 1262, 1266 (5th Cir. 1987); *1756, Inc. v. The Attorney General of the United States*, 745 F. Supp. 9, 17 (D.C. Dist. 1990).

As such, the Petitioner has not submitted the required initial evidence necessary under 8 C.F.R. § 204.5(h)(3)(ix).

We conclude that although the Petitioner claims he meets five criteria, because his arguments fail on any of the three criteria we discussed above, that means he cannot numerically meet the required number of criteria and it is unnecessary for us to reach a decision on his other claimed elements. As the Petitioner cannot fulfill the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3), we reserve

our evaluation of those requirements. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (finding it unnecessary to analyze additional grounds when another independent issue is dispositive of the appeal); *see also Matter of D-L-S-*, 28 I&N Dec. 568, 576–77 n.10 (BIA 2022) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

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 criteria. As a result, we do not need to 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 it does not support a finding 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 that goal. USCIS 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 the significance of their 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). Moreover, the record does not otherwise demonstrate that the Petitioner has garnered national or international acclaim in the field, and they are one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) and 8 C.F.R. § 204.5(h)(2).

For the reasons discussed above, the Petitioner has not demonstrated their 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.