U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 25692485

Date: FEB. 14, 2023

Appeal of Texas Service Center Decision

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

The Petitioner is a professor at a foreign research university who 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 received a major, internationally recognized award, nor did he demonstrate 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, 1121 (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 has a lengthy career in the bioengineering and nanotechnology field. He received his Ph.D. in industrial chemistry and became a professor at a research university approximately a decade later, a position he continues to hold.

A. Translation Certifications

We begin noting a deficiency in some evidence in the record relating to documents that originate in a foreign language. "Petitioners and applicants for immigration benefits are required by regulation to provide certified English translations of any foreign language documents they submit." *Matter of Nevarez*, 15 I&N Dec. 550, 551 (BIA 1976) (citing 8 C.F.R. § 103.2(b), now promulgated at 8 C.F.R. § 103.2(b)(3)) which states "[a]ny document containing foreign language submitted to U.S. Citizenship and Immigration Services (USCIS) shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English."

The language utilized within the regulation implicitly precludes a single certification that validates several translated forms of evidence unless the certification specifically lists the translated documents. Without a single translator's certification for each foreign language form of evidence, or a translator's certification specifically listing the documents it is validating, the certification cannot be regarded to be certifying any specific form of evidence. The final determination of whether evidence meets the plain language requirements of a regulation lies with USCIS. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988) (finding the appropriate entity to determine eligibility is USCIS).

Reviewing the certifying documents relating to the Petitioner's evidence in his response to the Director's request for evidence, those instruments appear to be a single blanket certification document. As noted above, the regulation does not contain any provision that allows for such a blanket translation certificate. The submission of a single translation certification that does not identify the document or documents it purportedly accompanies, does not meet the requirements of the regulation at 8 C.F.R. § 103.2(b)(3). Such a deficiency in the certification results in the evidence accompanied by these translations to possess diminished value and are insufficient to demonstrate the validity of the foreign language materials.

B. Evidentiary Criteria

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 four of the regulatory criteria. The Director decided the Petitioner satisfied one criterion relating to authorship of scholarly articles, but he had not satisfied the criteria associated with prizes or awards, original contributions, or leading or critical role. On appeal, the Petitioner maintains that they meet the evidentiary criteria relating to awards and contributions of major significance. After reviewing all the evidence in the record, we conclude he has satisfied the scholarly articles regulation, but he has not met at least three total criteria.

> *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).

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 initially claimed several prizes or awards, but after the Director did not find in his favor on this issue, he has pared back his claims to two awards within the appeal. Both the awards the Petitioner claims on appeal are primarily accompanied by evidence originating in a foreign language and their translations have a deficient certification that is not in accord with the regulation. Without properly certified translations, it would serve no purpose for us to evaluate the majority of the evidence to determine whether the Petitioner would otherwise satisfy this criterion's requirements.

We close this discussion noting the identified 2019 innovation award may be considered as a noteworthy achievement, were it to name the Petitioner. But it does not. The award was issued for a particular designed device, and it was awarded to the Petitioner's university where he serves as a professor. Like an employer-received award where a candidate participated as part of a group project that earned the accolades, an award bestowed upon a team generally does not meet the plain language requirements of this criterion that requires "the alien's receipt" of prizes or awards. *See generally* 6 *USCIS Policy Manual* F.2 (Appendices), https://www.uscis.gov/policymanual.

While exceptions to this may exist, the Petitioner does not develop his position here of why he should be considered to be this accolade's recipient. Additionally, the award was issued for a specific device design —identified as a self-powered emergency signal aqua suit—and how that innovation would be used in real-world situations. While the Petitioner claims a technology that is embedded within this award-winning device is attributable to him, he did not demonstrate the award was issued for that embedded technology as opposed to the device as it was presented at the competition and how the overall device would be used in the real world.

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).

The Petitioner initially claimed eligibility under this criterion but did not continue to assert those claims when he responded to the Director's request for evidence. In their decision, the Director discussed the evidence submitted for this criterion and found that the Petitioner did not establish his eligibility. On appeal, the Petitioner does not contest the Director's findings for this criterion or offer additional arguments. For these reasons, the Petitioner has abandoned his eligibility claims under this criterion. *Matter of Mariscal-Hernandez*, 28 I&N Dec. 666, 672 (BIA 2022) (finding arguments not raised on appeal are abandoned). Accordingly, the Petitioner has not submitted qualifying evidence under this criterion.

We conclude that although the Petitioner claims he meets three criteria within the appeal, because his arguments fail on any single criterion 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.