U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22642744

Date: FEB. 28, 2023

Appeal of Texas Service Center Decision

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

The Petitioner is a doctor 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 that 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 to U.S. Citizenship and Immigration Services (USCIS) 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 urologist who has studied the integration of traditional and western medicine, and was the director of urological surgery at his hospital when he filed the petition. 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 the following eight categories:

- Lesser prizes or awards;
- Membership;
- Published material;
- Participation as a judge;
- Contributions of major significance;
- Authorship of scholarly articles;
- Performance of a leading or critical role for distinguished entities; and
- High salary or remuneration.

The Director decided that the Petitioner satisfied two of the criteria relating to judging and the authorship of scholarly articles, but he had not satisfied the other criteria listed above. On appeal, the Petitioner maintains that he meets the evidentiary criteria relating to published material and awards. But he does not raise and has therefore abandoned or waived his claims under the membership, original contributions, leading or critical role, and high salary or remuneration criteria. *Matter of Mariscal-Hernandez*, 28 I&N Dec. 666, 672 (BIA 2022). After reviewing all the evidence in the record, we conclude he has not demonstrated eligibility for this highly restrictive classification.

> *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

claimed several awards and the Director determined that each was not nationally or internationally recognized in the field, or the record did not establish they were issued for excellence in the field.

First, in his appeal the Petitioner essentially restates his claims as presented to the Director and does not describe how the Director might have erred in their analysis as it relates to his awards. Further, we conclude the record lacks sufficient evidence to demonstrate his awards are nationally or internationally recognized in the field.

The Petitioner presented his 2010 third prize [redacted] Award issued by the municipal government in [redacted] As this award was issued by the municipal government, and because the Petitioner has not offered probative material establishing its recognition goes beyond the issuing entity, it appears to be regional in nature. Even accolades issued by a government might not be nationally recognized in the field. A petitioner should offer probative evidence showing an award receives at least national-level attention that goes beyond the issuing governing body (e.g., within a petitioner's field). The Petitioner has not offered evidence demonstrating this award is nationally or internationally recognized in the field.

Next, the Petitioner submits two awards issued by the [redacted] Medicine. In 2020, this organization issued him a first prize award and in 2011 they granted him the second prize award; each accolade was a science and technology award. We observe the translated document detailing this award's plans reflects that this award is issued to collectives and individuals who have achieved a certain level of results in basic study. However, the document continues stating "[p]rojects that have won this award will be recommended for National Science and Technology Awards based on the principle of meritocracy." The Petitioner's awards appear to be at a level lesser than those that are nationally or internationally recognized in the field.

The final awards the Petitioner claims on appeal are third prize science and technology awards in the 2007 and 2010 events. The [redacted] Medical Sciences issued these awards. Even though we acknowledge the issuing entity's reputation, the Petitioner has not established that these awards, from more than a decade before he filed the petition, were nationally or internationally recognized in the field. National and international recognition results, not from the individual who signed or issued the prize or the award, but through the awareness of the accolade 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. Sufficiently probative evidence that an award is nationally or internationally recognized is generally material from sources besides the issuing entity. *Krasniqi v. Dibbins*, 558 F. Supp. 3d 168, 183 (D.N.J. 2021).

Although the Petitioner demonstrates he has received accolades for his work, we conclude he 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).

Within the appeal, the Petitioner identifies the authorship of scholarly articles criterion at 8 C.F.R. § 204.5(h)(3)(vi) and for supportive evidence under that requirement, he discusses an article that the Petitioner did not author. It is unclear why the Petitioner has identified this evidence on appeal as the Director determined his evidence satisfied the scholarly articles criterion. In case the brief mistakenly placed the discussion of published material under the portion in which the Petitioner mentions scholarly articles, we discuss the published material criterion here.

The Petitioner discussed one article before the Director, and he presents the same material on appeal. While the Director focused on other requirements in their denial decision, we also note additional deficiencies. First, the article is in a foreign language but it is not accompanied by a certified translation, which is a requirement of 8 C.F.R. § 103.2(b)(3). The regulation requires that the translator certifies the English language translation is complete and accurate, and that the translator is competent to translate from the foreign language into English. Because the Petitioner did not submit a properly certified English language translation of the document, we cannot meaningfully determine whether the translated material is accurate and thus supports his claims. The information relating to this publication has a translation suffering from this same shortcoming.

Moreover, the translated material does not contain the article's date as the regulation requires. Finally, the Petitioner did not identify the circulation figures for other publications in China by which it can be determined through comparison that *Long Life Magazine* is 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 person should establish that the circulation (on-line or in print) is high compared to other circulation statistics. . . ."). In summary, the Petitioner has not submitted evidence that meets the plain language requirements of 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 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.