U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 25431793

Date: FEB. 28, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, a professional tennis player, 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 Nebraska 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 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; who seek to enter the United States to continue work in the area of extraordinary ability; and whose 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 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 the initial evidence requirements through either a one-time achievement or meeting three lesser criteria, 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 Petitioner is a professional tennis player who outlined his achievements to include, in part, playing in every grand slam tournament and reaching an international rank of [redacted] for men's singles. The Petitioner stated that he accomplished numerous achievements in his field of expertise which have been recognized on both a national and international level. 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 claims to have satisfied four of these criteria, summarized below:

- (i), documentation of the individual's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor
- (ii), membership in associations requiring outstanding achievements of their members
- (iii), published material about the individual in professional or major media
- (ix), high remuneration for services

The Director concluded the Petitioner met one criterion pertaining to the receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. On appeal, the Petitioner asserts that his evidence satisfies the applicable legal requirements to satisfy the other claimed criteria.

We will not disturb the Director's determinations regarding the one criterion met by the Petitioner. But for the reasons discussed below, we agree with the Director that the Petitioner has not satisfied the other claimed criteria.

A. Evidentiary Criteria

> *Published material about the individual in professional or major trade publications or other major media, relating to the individual'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).*

To meet this criterion, the published material must be about the Petitioner and related to his specific work in the field for which classification is sought; it must include the title, date, and author of the material and any necessary translation; and the publication must qualify as a professional publication, major trade publication, or major media publication. 8 C.F.R. § 204.5(h)(3)(iii). With the petition, the Petitioner submitted online articles from various websites and publications. In his decision, the

Director indicated that he reviewed the articles submitted and found that none of the articles met plain language requirements of the regulation since some articles lacked the URL address or the author, and the Petitioner did not provide sufficient evidence to establish that the cited sources qualify as professional or major trade publications or other major media.

On appeal, the Petitioner states that the article submitted meets the plain language of the regulation: [redacted] written by [redacted] and published at atptour.com on [redacted] 2016. On appeal, the Petitioner submits the full URL address, and a printout from rankranger.com that lists the organic traffic of atptour.com as 22.5 million. However, the record does not contextualize this statistic, indicate its significance, or elaborate on how that information could establish that the website is the type of major media contemplated by 8 C.F.R. § 204.5(h)(3)(iii). The submitted materials therefore do not meet the Petitioner's burden to show atptour.com as major media. *See Matter of Chawathe*, 25 I&N Dec. at 375-76.

The Petitioner further states that he was part of a media program produced by *People Daily* and featured on many affiliating major media platforms, including people.cn. The media coverage occurred on [redacted] 2019, and it was called [redacted] On appeal, the Petitioner submits the program that was posted on the *People Daily's* online platform, www.people.cn. However, the Petitioner did not provide the full transcript of the media coverage to include the information of the author and reporter of this program.

The Petitioner also submits additional articles about him posted to tennis.com. On appeal, the Petitioner submits the website visitation and ranking data for tennis.com from SimilarWeb.com. Evidence of published material in major media publications about the Petitioner should establish that the circulation (online or in print) or viewership is high compared to other statistics and identify the intended audience. *See generally* 6 *USCIS Policy Manual* F.2 (Appendices), https://www.uscis.gov/policymanual (discussing circulation or viewership). On appeal, the Petitioner asserts tennis.com received 2.8 million visits. The website statistics from SimilarWeb.com indicate that tennis.com ranks 28,978 globally and eighth in sports and tennis in the United States; it also shows the average amount of visits to the website and time viewers spend on the website. However, the record does not contextualize those statistics, indicate their significance, or elaborate on how that information could establish that the website is the type of major media contemplated by 8 C.F.R. § 204.5(h)(3)(iii).

In addition, the Petitioner submitted an article about him from tennisworldusa.org, and a printout from TennisWorld USA stating it has "more than 50 million readers per year." However, this is a self-reported figure from the website's editor or publisher. The Petitioner did not support the record with independent, objective evidence corroborating the website's claims. USCIS need not rely on the self-promotional material of the publisher. *See Braga v. Poulos*, No. CV 06-5105 SJO FMOX, 2007 WL 9229758, at *7 (C.D. Cal. July 6, 2007), *aff'd*, 317 F. App'x 680 (9th Cir. 2009) (concluding that the agency did not have to rely on a company's self-serving assertions on the cover of a magazine as to the magazine's status as major media). Without more information, it is not clear if this is major media.

Despite the deficiencies noted above, we further observe that the documentary evidence reflects published material about the Petitioner relating to his work as a professional tennis player. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires "[p]ublished 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 [emphasis added]." As noted by the Director, the Petitioner intends to enter the United States as a tennis coach. Therefore, any published material as a competitor is not within the Petitioner's field of endeavor as a coach. *See Lee v. I.N.S.*, 237 F. Supp. 2d 914 (N.D. Ill. 2002) (upholding a finding that competitive athletics and coaching are not within the same area of expertise). Moreover, the Petitioner does not claim, nor does the record of proceeding reflect, that the Petitioner has had any published material about him as a coach consistent with the regulation at 8 C.F.R. § 204.5(h)(3)(iii).

After review of the totality of the evidence submitted in support of this criterion, we conclude that the Petitioner has not established that he meets 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.

On appeal, the Petitioner claims that he meets this criterion when his remuneration is compared specifically to other Chinese professional tennis players. The Petitioner did not submit financial evidence such as tax returns or income statements. Instead, the Petitioner utilized the information found on atptour.com regarding career prize money earned by professional tennis players on the ATP tour. The Petitioner provides a printout from atptour.com of the [redacted] and their prize money earned from ATP events that listed the [redacted] for each player, including the Petitioner. These figures appear to constitute earnings over the course of each player's career. The remuneration of the Petitioner and four additional players were listed as: $1,106768; $748,947; $639,331; $425,427; and, $406,732. The Petitioner earned the second highest remuneration at $748,947.

The Petitioner seeks classification as an individual of extraordinary ability, one of those individuals in that small percentage who have risen to the very top of the field of endeavor. Commensurate with such standing, the Petitioner must submit documentary evidence of the earnings of those in his occupation performing similar work at the top level of the field. In the instance circumstance, the Petitioner claims extraordinary ability as a tennis player, yet compares his remuneration only to other Chinese professional tennis players and not all professional tennis players. The Petitioner has not shown that this is indicative of significantly high remuneration consistent within the plain meaning of this criterion. For this reason, the Petitioner has not met this criterion.

While the Petitioner argues and submits evidence for one additional criterion on appeal relating to membership in associations that require outstanding achievements at C.F.R. § 204.5(h)(3)(ii), it is unnecessary for us to reach a decision on this additional ground because he cannot numerically meet the required number of criteria. As the Petitioner cannot fulfill the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3), we reserve this issue. *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach); *see also Matter of L-A-C-*, 26 I&N Dec. 516, n.7 (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 lesser criteria. We also need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20, or render a determination on the issue of whether the Petitioner's entry will substantially benefit prospectively the United States. Accordingly, we reserve these issues.[1]

Nevertheless, we have reviewed the record in the aggregate and concluded 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 those progressing toward the top. *Price*, 20 I&N Dec. at 954 (Assoc. Comm'r 1994) (concluding that even major league level athletes do not automatically meet the statutory standards for classification as an individual of "extraordinary ability,"); *Visinscaia*, 4 F. Supp. 3d at 131 (internal quotation marks omitted) (finding that the extraordinary ability designation is "extremely restrictive by design,"); *Hamal v. Dep't of Homeland Sec. (Hamal II)*, No. 19-cv-2534, 2021 WL 2338316, at *5 (D.D.C. June 8, 2021) (determining that EB-1 visas are "reserved for a very small percentage of prospective immigrants"). *See also Hamal v. Dep't of Homeland Sec. (Hamal I)*, No. 19-cv-2534, 2020 WL 2934954, at *1 (D.D.C. June 3, 2020) (citing *Kazarian,* 596 at 1122 (upholding denial of petition of a published theoretical physicist specializing in non-Einsteinian theories of gravitation) (stating that "[c]ourts have found that even highly accomplished individuals fail to win this designation")); *Lee v. Ziglar*, 237 F. Supp. 2d 914, 918 (N.D. Ill. 2002) (finding that "arguably one of the most famous baseball players in Korean history" did not qualify for visa as a baseball coach). 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 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). The record does not contain sufficient evidence establishing that he is among the upper echelon in his field.

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, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.

[1] *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach); *see also Matter of L-A-C-*, 26 I&N Dec. 516, n.7 (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).