U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 24017952

Date: JAN. 3, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, a competitive aircraft model pilot, seeks classification as an individual of extraordinary ability. 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 does not establish the Petitioner satisfied at least three of the 10 initial evidentiary criteria. On appeal, the Petitioner asserts that the Director's decision was erroneous and that he has established eligibility for the requested classification.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 203(b)(1) of the Act makes visas available to immigrants with extraordinary ability if:

> (i) the [noncitizen] has 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,
>
> (ii) the [noncitizen] seeks to enter the United States to continue work in the area of extraordinary ability, and
>
> (iii) the [noncitizen]'s 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 sustained acclaim and the recognition of their achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If a petitioner does not submit this evidence, then they must provide sufficient qualifying documentation that meets at least three of the 10 categories 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).

II. ANALYSIS

The Director found that the Petitioner did not establish that he received a major, internationally recognized award under the regulation at 8 C.F.R. § 204.5(h)(3); therefore, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Petitioner asserted that he satisfied the criteria at 8 C.F.R. § 204.5(h)(3)(i)-(iv); however, the Director concluded that the Petitioner satisfies only the criterion at 8 C.F.R. § 204.5(h)(3)(iv). On appeal, the Petitioner reasserts that he satisfies the criteria at 8 C.F.R. § 204.5(h)(3)(i)-(iii) in addition to the criterion at 8 C.F.R. § 204.5(h)(3)(iv). The Petitioner does not assert, and the record does not support the conclusion, that he satisfies the criteria at 8 C.F.R. § 204.5(h)(3)(v)-(x). After reviewing the record in its entirety, we conclude that it does not demonstrate that the Petitioner satisfies the requirements of at least three criteria, for the reasons discussed below.

> *Documentation of the* [*noncitizen's*] *membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.* 8 C.F.R. § 204.5(h)(3)(ii).

The record contains a copy of the Petitioner's identification card from the Ministry of Youth and Sports of Ukraine, written in a language other than English, and a certified English translation of it. The translation of the identification card indicates that the Petitioner bears the title of Master of Sports of Ukraine in Aeromodelling. The Petitioner asserts that this satisfies 8 C.F.R. § 204.5(h)(3)(ii).

In response to the Director's request for evidence (RFE), the Petitioner asserted that the Ministry of Youth and Sports of Ukraine awards the title of Master of Sports of Ukraine "to athletes . . . for compliance with qualification rules and requirements to the relevant sport, approved in the manner prescribed by law, provided that there are three judges of national or international category in the panel of judges at all-Ukrainian competitions." The Petitioner also submitted a certificate from the Ukrainian Federation of Aeromodelling and Dron [sic] Sport in response to the RFE, indicating that the Ministry of Youth and Sports of Ukraine awarded the Petitioner the title of Master of Sports of Ukraine for finishing in first place at the 2017 Championship of Ukraine. The certificate further indicates that the Ministry of Youth and Sports of Ukraine is part of the Cabinet of Ministers of Ukraine. The certificate is supplemented with a copy of Appendix 1 to Qualification Norms and Requirements of the Ukrainian Unified Sports Classification of Non-Olympic Sports, specifically

aeromodelling sports, from the Ukrainian Federation of Aeromodelling, and a certified English translation of it. The appendix provides criteria for participation in junior and adult competitions, and it further indicates that certain performance results, such as "1-3 at the Championship of Ukraine" or setting a national record in certain competitions are qualification criteria for the title of Master of Sports of Ukraine.

The Director concluded that the evidence regarding the Petitioner's title of Master of Sports of Ukraine does not establish that he is a member in an association in the field that requires outstanding achievements of their members, as required by 8 C.F.R. § 204.5(h)(3)(ii). Specifically, the Director found that the Ministry of Youth and Sports of Ukraine is a governmental body, not an association in the field.

On appeal, the Petitioner asserts that "[t]he title 'Master of Sports of Ukraine' . . . is not easy to earn. One of the conditions for it to be awarded is that the applicant must participate in the competition, where the refereeing will be at least three judges with the international category." The Petitioner further asserts on appeal that the appendix submitted with the Petitioner's certificate in response to the Director's RFE establishes that there is "a clear list of qualifications a member must satisfy to become a Master of Sports of Ukraine" and that "there is a particular procedure implemented by the recognized international experts to evaluate evidence provided to prove those qualifications." The Petitioner alternately refers to the title of Master of Sports of Ukraine as "the status of Master of Sports."

Although the record establishes that the Petitioner holds the title, or status, of Master of Sports of Ukraine issued by a governmental body, the record does not establish that such titleholders or status bearers are members of any particular association. Because the record does not address any particular association, it does not establish that the Petitioner is a member of an association in the field for which classification is sought. Therefore, the record does not satisfy the criterion at 8 C.F.R. § 204.5(h)(3)(ii).

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

The record contains copies of three blog posts about the Petitioner, written in a language other than English, and certified English translations of them. In the RFE, the Director informed the Petitioner that the record does not establish that the blog posts are published material about the Petitioner in professional or major trade publications or other major media, in part because the record does not establish that the blogs are widely read in order to constitute major media. The Petitioner provided letters from the editors of the blog post websites in response to the RFE, which provided general information about the authors of the blog posts, the dates of publication, and the number of views the posts received. The record also contains website statistics from a website called SimilarWeb.

The Director acknowledged the letters from the editors; however, the Director found that the record does not establish that the blog posts constitute major media as contemplated by 8 C.F.R. § 204.5(h)(3)(iii).[1]

On appeal, the Petitioner asserts that a prior, non-precedent decision, *Matter of A-S-*, 2018 WL 1168942, *3 (AAO 2018), "states that submission by the petitioner an article [sic] which includes the title, date, and author and that constitutes published material about the petitioner relating to his career, together with evidence showing that the magazine qualifies as a major media, establishes that the petitioner satisfies the criteria." The Petitioner reasserts that the letters from the editors and website statistics establish that websites that published the blog posts are "top-ranked media in sports."

The Petitioner refers to our non-precedent decision concerning a professional DJ and music producer who did not establish that he satisfied at least three of the 10 criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). This decision was not published as a precedent and therefore does not bind USCIS officers in future adjudications. *See* 8 C.F.R. § 103.3(c). Non-precedent decisions apply existing law and policy to the specific facts of the individual case, and may be distinguishable based on the evidence in the record of proceedings, the issues considered, and applicable law and policy. Moreover, *Matter of A-S-* stated that the petitioner in that case "provided evidence showing that the magazine qualifies as a major medium," without specifying the particular evidence in that record and how it demonstrated that magazine qualified as a major medium. *Matter of A-S-*, 2018 WL 1168942 at *3. Accordingly, the non-precedent decision *Matter of A-S-* provides neither controlling nor persuasive guidance in this matter.

We first note that one of the three website statistics does not apply to the website that published a blog post about the Petitioner. Specifically, one of the websites bears the URL https://champion.com.ua, and the letter from the editor of that website describes Champion.com.ua as "the oldest Ukrainian sports site." However, the website statistics from SimilarWeb in the record relate to "champion.com," which the statistics describe as the 198th most popular "fashion and apparel" website and 4,908th most popular website in the United States. Therefore, the record does not contain website statistics regarding the Ukrainian sports site at the URL https://champion.com.ua.

The record does not otherwise establish that the three blog posts about the Petitioner were published by major media, as contemplated by 8 C.F.R. § 204.5(h)(3)(iii). The letters from the editors, as translated in the record, describe the websites as "the leading Ukrainian sports release," "a Ukrainian sports website dedicated to domestic and foreign sports," and "the oldest Ukrainian sports site," respectively. The website statistics in the record that relate to the two remaining websites indicate that they rank 206th and 2,685th in Ukraine, respectively, and that approximately 85% of both websites' traffic comes from Ukraine; however, the record does not contextualize those statistics and elaborate on how that information may establish that the websites are the type of major media contemplated by 8 C.F.R. § 204.5(h)(3)(iii). For example, although the website statistics also indicate the average number of visits the websites receive monthly, the record does not explain how that a predominantly Ukrainian audience of any particular size is a substantial enough portion of the overall Ukrainian

[1] Although the Director found that at least one of the blog posts does not identify its author, the Petitioner clarifies on appeal the locations in the blog posts where the names of the authors appeared. We withdraw the Director's statement to the contrary.

population for those statistics to indicate that the websites are major media. *See* 6 USCIS Policy Manual F App'x, https://www.uscis.gov/policymanual (providing that evidence of published material in major media about the person should establish that the circulation (online or in print) or viewership is high compared to other statistics and show who the intended audience is, as well as the title, date, and author of the material.). Because the record does not establish that the three websites that published blog posts about the Petitioner are major media, the record does not satisfy the criterion at 8 C.F.R. § 204.5(h)(3)(iii).

Because the record does not satisfy the criteria at 8 C.F.R. § 204.5(h)(3)(ii)-(iii), and because the Petitioner does not assert, and the record does not support the conclusion, that the record satisfies the criteria at 8 C.F.R. § 204.5(h)(3)(v)-(x), we need not determine whether the record satisfies the criteria at 8 C.F.R. § 204.5(h)(3)(i) because, even if it did, it would not satisfy at least three criteria at 8 C.F.R. § 204.5(h)(3). Accordingly, we reserve our opinion regarding the criteria at 8 C.F.R. § 204.5(h)(3)(i).

In summation, the record does not satisfy a least three of the criteria at 8 C.F.R. § 204.5(h)(3).

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 10 criteria. As a result, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. *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). Nevertheless, we have reviewed the record in the aggregate, concluding that it does not support a conclusion that the Petitioner has established the acclaim and recognition required for the classification sought.

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; *see also* 8 C.F.R. § 204.5(h)(2).

ORDER: The appeal is dismissed.