U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27032687

Date: JUN. 09, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, a plant accountant, seeks classification as an individual of extraordinary ability in business. 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 the record did not establish the Petitioner qualifies as an individual of extraordinary ability either as the recipient of a one-time achievement that is a major, internationally recognized award, or at least three of the ten regulatory criteria listed at 8 C.F.R. § 204.5(h)(3)(i) – (x). 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) of the Act makes visas available to immigrants with extraordinary ability if:

(i) the alien 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 alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien'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 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 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

A. Evidentiary Criteria

Because the Petitioner has not established she received a major, internationally recognized award, she must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i) – (x). The Director found the Petitioner met two of the ten evidentiary criteria, that of 8 C.F.R. § 204.5(h)(3)(viii), related to a leading or critical role performed for distinguished organizations and that of 8 C.F.R. § 204.5(h)(3)(ix), related to high salary or other significantly high remuneration. On appeal, the Petitioner asserts she meets two additional evidentiary criteria, that of (iv), related to judging others' work and (v), related to original contributions of major significance.[1] For the reasons described below, we withdraw the Director's finding that the Petitioner has established eligibility under (viii) and (ix). We instead conclude that she has established eligibility under only one criterion, that of (iv). While we do not discuss each piece of evidence individually, we have reviewed and considered each one.[2]

[1] On appeal, the Petitioner does not dispute the Director's finding that she had not established eligibility under criterion (i), related to lesser-known prizes or awards, and (ii), related to membership in an association requiring outstanding achievements. Additionally, the Petitioner did not claim eligibility under criteria (iii), (vi), (vii), or (x) before the Director or on appeal. As the Petitioner provides no evidence or arguments addressing these six criteria on appeal, we consider these issues to be abandoned. See Matter of R-A-M-. 25 I&N Dec. 657. 658 n.2 (BIA 2012) (stating that when a filing party fails to appeal an issue addressed in an adverse decision, that issue is waived). *See also Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226. 1228 n. 2 (11th Cir. 2005). citing United States v. Cunningham, 161 F.3d 1343, 1344 (11th Cir. 1998); Hristov v. Roark, No. 09-CV-27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (finding plaintiff's claims abandoned as he failed to raise them on appeal to the AAO).

[2] When USCIS provides a reasoned consideration to the petition, and has made adequate findings, it will not be required to specifically address each claim a petitioner makes, nor is it necessary for it to address every piece of evidence the petitioner presents. Guaman-Loja v. Holder, 707 F.3d 119, 123 (1st Cir. 2013) (citing Martinez v. INS, 970 F.2d 973, 976 (1st Cir.1992); see also Kazemzadeh v. U.S. Atty. Gen., 577 F.3d 1341, 1351 (11th Cir. 2009); Casalena v. U.S. INS, 984 F.2d 105, 107 (4th Cir. 1993).

> *Evidence of the alien's participation, either individually or on a panel, as a judge of the* work of others in the same or an allied field of specification for which classification is sought. 8 C.F.R. 204.5(h)(3)(iv).

This regulatory criterion requires the petitioner to show that they have not only been invited to judge the work of others, but also that they actually participated in the judging of the work of others in the same of allied field of specialization.[3] The Petitioner asserts that her employment as an accountant and in various accountant related positions involved duties to review others' work. She provided examples of how she reviewed a subordinate's draft of a request for proposal and another coworker's draft of a standard operating procedure. On appeal, she provides a letter and a price quote document for the sale of seeds to the government of Fiji. The Petitioner asserts that she judged and reviewed these materials on behalf of others and at their request, which establishes she meets this criterion.

The Director determined the Petitioner did not satisfy this criterion, explaining:

> [T]he phrase "a judge" implies a formal designation in a judging capacity, either on a panel or individually. . . . Regardless of broad dictionary definitions of the words "judge" and "work," the final determination of whether evidence meets the plain language requirements of a regulation lies with USCIS. . . . [E]vidence must demonstrate that the beneficiary is "recognized in the field of expertise," so the regulation cannot be read to include every informal instance of evaluating employees or products. Incidental evaluation responsibilities inherent to your employment or product validation position do not establish that you served in an official capacity, either individually or on a panel, as "a judge" of the work of others . . . .

The Director points out relevant considerations concerning the quality of the Petitioner's evidence. While we agree with the qualitative analysis, we conclude it more appropriately belongs in a final merits determination. For instance, the plain language of the criterion does not mention that the judging must be in an "official capacity," nor does the criterion require the evidence to demonstrate "recognition in the field of expertise." While this analysis is certainly relevant to our overall determination of eligibility for the extraordinary ability classification, it appears that in this particular instance, such qualitative analysis belongs in a final merits determination. The Petitioner has established that she judged the work of others in her field, thereby satisfying the plain language of the criterion. We withdraw the Director's finding that she did not meet this criterion and instead conclude she has met this criterion.

However, were we to engage in a final merits determination, the Petitioner's evidence of her participation as a judge would not support a finding of sustained national or international acclaim or that she is among that small percentage who has risen to the very top of her field for reasons similar to those the Director articulated. The Director further noted the intent of Congress in implementing the regulations was to set a very high standard for the extraordinary ability classification, as reflected

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[3] See generally USCIS Policy Memorandum PM 602-0005.1, Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator's Field Manual (AFM) Chapter 22.2, AFM Update AD11-14 8 (Dec. 22, 2010), https://www.uscis.gov/policymanual/HTML/PolicyManual.html.

by the requirement to present more extensive documentation than is required for lesser classifications. See 56 Fed. Reg. 30703, 30704 (July 5, 1991). A review of coworkers' drafts and other similar instances of "judging" would not serve as strong or quality evidence of eligibility for the extraordinary ability classification.

> Evidence of the individual*'s original scientific, scholarly, artistic, athletic, or business*-related contributions of major significance in the field. 8 C.F.R. § 204.5(h)(3)(v)

In order to satisfy the regulation at 8 C.F.R. § 204.5(h)(3)(v), a petitioner must establish not only that they have made original contributions, but that those contributions were of major significance in the field. For example, a petitioner may show that the contributions have been widely implemented throughout the field, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance.[4]

The Petitioner primarily relies upon numerous support letters from former employers and coworkers to establish eligibility under this criterion. On appeal, the Petitioner asserts the Director "DID NOT RECOGNIZE EVEN ONE SINGLE LETTER/TESTIMONY" (all capital letters in original). However, the Director's decision includes quoted content from eight different letters. As such, we do not find support for the Petitioner's assertion. The Director concluded:

> This criterion has not been met because the evidence submitted does not show that your contributions are considered to be of major significance in the field of endeavor. To successfully meet this criterion, you must establish that your original contribution[s] have impacted or influenced their entire field. The letters . . . do not describe an impact that is sufficiently widespread. The term "original" and the phrase "major significance" are not superfluous and therefore have some meaning (internal citations omitted). Regardless of the field, the phrase "contributions of major significant in the field" requires substantial influence beyond one's employer, clients, or customers. . . .

We reviewed the Petitioner's evidence and agree with the Director's determination quoted above. The letters support a finding that the Petitioner performed well at her jobs and offered her employers time and cost saving methods and tools. The letters' authors describe her work and the impact her work had on their business, including their sister and subsidiary businesses in other parts of the world. However, for the reasons the Director explained, this is not necessarily sufficient to establish eligibility under this criterion.

In the [redacted] letter, the author states they do not personally know the Petitioner but heard about her "bottom up" accounting methods and detailed cost analysis reports from their professional contacts. The author explained that they had never heard of the Petitioner's method before but when implemented, they were able to prepare the budget in less time and offer their board of directors a detailed report. Although the author describes a positive experience using methods and reports they attribute to the Petitioner's creation, this is insufficient to establish how the Petitioner's methods are "original" or of "major significance in the field." While a person may not have heard of a method before, this does not necessarily establish its originality. Likewise, simply because a method may be

[4] See Visinscaia, 4 F. Supp. 3d 126 at 134.

new to a particular business or customized for a particular business, does not establish the method's originality. Furthermore, implementation of the method across one or even several businesses does not support a finding that such methods constitute "contributions of major significance in the field."

Even if the Petitioner developed or created the tools and methods [redacted] and the Petitioner's employers used, the Petitioner did not demonstrate the contributions' impact or influence in the overall field.[5] Further, even if the methods delivered cost/time savings, more detailed reports, and other benefits to the business, the content of the letters do not contain sufficient details supporting a finding of "major significance."[6]

We conclude, the support letter authors do not sufficiently identify original contributions, nor do they provide specific, detailed information explaining how the contributions have been majorly significant in the field. Because the Petitioner has not established that her personal and professional achievements are original contributions which have been of major significance to the overall field of accounting, we conclude that she does not meet this criterion.

> 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)

A petitioner must establish that they have performed in a leading or critical role. For a "leading" role, we consider evidence establishing that a petitioner is (or was) a leader within the organization or establishment.[7] For a "critical" role, we look to evidence that establishes a petitioner has contributed in a way that is of significant importance to the outcome of the organization or establishment's activities.[8] For a "distinguished" reputation, we refer to the dictionary definition of "distinguished," meaning "marked by eminence, distinction, or excellence or befitting an eminent person."[9]

The Director found the Petitioner met this criterion but provided no analysis to support this determination. We reviewed the Petitioner's employment history and experience, the letters from employers and coworkers, as well as the articles and press releases about the Petitioner's various employers. While we acknowledge this evidence, we conclude it does not establish eligibility under this criterion.

To illustrate, the evidence of [redacted] distinguished reputation includes press releases about their partnerships, mergers, and acquisitions, as well as an organizational chart, and a Wikipedia printout about the company. It is not apparent how their organizational structure or press releases and articles about their business operations establishes [redacted] reputation. Wikipedia is an online

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[5] See generally USCIS Policy Memorandum PM 602-0005.1, supra, at 8-9; see also Visinscaia, 4 F. Supp. 3d at 134-35 (upholding a finding that a ballroom dancer had not met this criterion because she did not corroborate her impact in the field as a whole).

[6] Additionally, the [redacted] letter does not state for whom or where the author works, nor does the letter contain letterhead, a business email address, or website. As such, we question the legitimacy of the author's ability to comment on the impact of the Petitioner's methods on their business or the Petitioner's originality. Therefore, we place little probative value in this letter.

[7] See generally USCIS Policy Memorandum PM 602-0005.1, supra, at 10.

[8] Id.

[9] Merriam-Webster's Dictionary definition of "distinguished" can be found online at https://www.merriam-webster.com/dictionary/distinguished.

encyclopedia edited and maintained by any member(s) of the public. As such, we do not consider Wikipedia to be a reliable information source. In addition, the printout provides background information about but this information does not necessarily establish reputation.

The Petitioner provided articles describing the another of the Petitioner's former employers, as a fast-growing United Kingdom-based cycling business that received funds to expand its operations. However, the Petitioner has not explained how this information establishes the has a distinguished reputation. Furthermore, the Petitioner provided a general job description of her position as "Finance Manager – International," but this job description does not supply sufficient information with which to determine whether the Petitioner performed in a leading or critical role for the

The Petitioner provided several letters from and articles about the The articles about the size and new projects suggest that it may have a distinguished reputation; however, there is little evidence to establish how the Petitioner performed a leading or critical role within the organization. The support letters favorably discuss the Petitioner's work and the company's appreciation of her, but they do not discuss how she performed as a leader within the organization, nor do they offer sufficiently detailed explanations of how she contributed in a way that was of significant importance to the outcome of the establishment's activities.

The letter from provides more detailed information about the Petitioner's role at the than the other letters; however, the letter is undated, not on letterhead, and includes a personal Gmail address, rather than a business address. Although describes herself as the former General Manager of Finance for the we question the credibility of this letter given its personal, rather than professional, appearance. Even if we accepted this letter as credible and probative, it would still not contain a sufficient explanation of how the Petitioner's role within the or her specific division, would be considered "leading" or "critical."

For the foregoing reasons, we withdraw the Director's finding that the Petitioner met this criterion and instead conclude the evidence does not establish her 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).

In order to meet this criterion, a petitioner must demonstrate that their salary or remuneration is high relative to the compensation paid to others working in the field.[10] The Director found the Petitioner met this criterion but provided no analysis to support this determination.

The Petitioner provided employment contracts and letters stating the salary various prior employers offered her, as well as a smattering of pay stubs from several of those positions; however, these documents do not show the actual salary the Petitioner earned.[11] For instance, the paystubs establish

[10] See generally USCIS Policy Memorandum PM-602-0005.1, supra, at 11.
[11] The evidence related to a prospective employment position in the United States and a salary proposed, but not yet earned,

the compensation paid to the Petitioner over the particular pay periods covered but do not clearly show the Petitioner's total annual salary. Likewise, the letters from employers proposing a salary or stating the Petitioner earned a particular salary does not sufficiently establish the actual salary the Petitioner earned.

The Petitioner provided printouts of salary data reports organized by position; however, the Petitioner has not sufficiently established that these are position-appropriate compensation surveys. To illustrate, the Petitioner provided United Kingdom salary averages and ranges for "finance jobs." It is unclear what positions such a broad category includes, but we assume it could range from simple bookkeeping positions to chief financial officer positions. Therefore, it is not possible to ascertain how the Petitioner's specific position compensation compares to others in those same positions in that geographical area. Similarly, the Glassdoor salary surveys pertain to accountants with one to three years of experience, whereas the Petitioner asserted she has 10 to 14 years of experience in her field. As such, the Glassdoor printouts of entry-level positions are not appropriate comparisons to the Petitioner's positions.

Both precedent decisions and case law support a position-appropriate application of 8 C.F.R. § 204.5(h)(3)(ix). See Matter of Price, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994) (considering a professional golfer's earnings versus other PGA Tour golfers); see also Skokos v. U.S. Dept. of Homeland Sec., 420 F. App'x 712, 713-14 (9th Cir. 2011) (finding salary information for those performing lesser duties is not a comparison to others in the field); Grimson v. INS, 934 F. Supp. 965, 968 (N.D. Ill. 1996) (considering NHL enforcer's salary versus other NHL enforcers); Muni v. INS, 891 F. Supp. 440, 444-45 (N. D. Ill. 1995) (comparing salary of NHL defensive player to salary of other NHL defensemen).

Additionally, some of the salary data printouts cut off the date in which they were conducted while others state they are from 2022. However, the Petitioner's employment in such positions may have occurred years prior, such that 2022 salary data would not provide an accurate picture of the average salaries paid when the Petitioner held the relevant position. Finally, the employer letters and contracts offer insufficient information about the organizational justifications to pay above the compensation data provided.

Accordingly, we conclude the Petitioner did not establish she commanded a high salary in relation to others in the same position. Therefore, we withdraw the Director's finding that she met this criterion and instead conclude the evidence does not sufficiently establish eligibility under this criterion.

B. O-1 Nonimmigrant Status

The record reflects the Petitioner may have applied for O-1 status, a classification reserved for nonimmigrants of extraordinary ability. Although USCIS may approve an O-1 nonimmigrant visa

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does not establish eligibility for the benefit sought at the time the Petitioner filed her petition. USCIS regulations affirmatively require a petitioner to establish eligibility for the benefit sought at the time the petition is filed. See 8 C.F.R. § 103.2(b)(1). A visa petition may not be approved based on speculation of future eligibility or after a petitioner becomes eligible under a new set of facts. See Matter of Michelin Tire Corp., 17 I&N Dec. 248, 249 (Reg'l Comm'r 1978). As such, we have considered the salary the prospective employer proposes to offer the Petitioner, but conclude it is insufficient to establish eligibility under this criterion, particularly as the regulatory criterion is written in past tense, e.g. "commanded."

petition on her behalf, an approval does not preclude USCIS from denying an immigrant visa petition adjudicated based on a different standard – statute, regulations, and case law. Form I-140 immigrant petitions are sometimes denied even after USCIS approves prior nonimmigrant petitions. See, e.g., Q Data Consulting, Inc. v. INS, 293 F. Supp. 2d 25 (D.D.C. 2003); IKEA US v. US Dept. of Justice, 48 F. Supp. 2d 22 (D.D.C. 1999); Fedin Bros. Co., Ltd. v. Sava, 724 F. Supp. at 1108, aff'd, 905 F. 2d at 41.

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 need not 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 that 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 a "rising star" or other individuals progressing toward the top. 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 that the significance of her 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 that she 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).

For the reasons discussed above, the Petitioner has not demonstrated eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.