U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

In Re: 27492815

Date: JUN. 22, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a sports journalist, 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 Texas Service Center denied the petition, concluding the Petitioner had satisfied only one of the ten initial evidentiary criteria, of which he must meet at least three. 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 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 sustained acclaim and the recognition of achievements in the field through a one-time achievement (that is, a major, internationally recognized award) or qualifying documentation that meets at least three of the ten 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) (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

Because the Petitioner has not indicated or established 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). In denying the petition, the Director determined the Petitioner fulfilled only one criterion – judging at 8 C.F.R. § 204.5(h)(3)(iv). On appeal, the Petitioner maintains he meets two additional evidentiary criteria.

> *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).

The Petitioner claims eligibility for this criterion based on articles posted on the internet and printed in publications. In order to fulfill this criterion, the Petitioner must demonstrate published material about him in professional or major trade publications or other major media, as well as the title, date, and author of the material.[1] In our evaluation, we will first determine whether the evidence reflects published material about the Petitioner relating to his work in the field, which contains the required title, date, and author. If the record supports those regulatory requirements, we will then decide whether professional or major trade publications or other major media published those materials.

Initially, the Petitioner provided an article posted on adevaldes.com. Neither the article nor the accompanying translation includes the article's author. In addition, the Petitioner submitted an article posted on lado.mx with both the article and accompanying translation reflecting the author as [redacted] Both postings show the same article. In response to the Director's request for evidence (RFE), the Petitioner offered an updated article with translation posted on adevaldes.com indicating the

[1] *See also* 6 *USCIS Policy Manual* F.2(B)(2)(appendix), https://www.uscis.gov/policymanual/HTML/PolicyManual.html.

authorship by '[redacted]'[2] Although the record contains the same article posted on two different internet sites, the Petitioner did not explain how they possess two different authors. The Petitioner must resolve inconsistencies in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Unresolved material inconsistencies may lead us to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit. *Id.* Furthermore, the article does not demonstrate published material about the Petitioner relating to his work. Rather, the article discusses the concept of sports entertainment with a brief mention of the Petitioner relating to his description of the article's topic. *See, e.g., Negro-Plumpe v. Okin,* 2:07-CV-820-ECR-RJJ at *1, *7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles regarding a show are not about the actor).

In addition, the Petitioner initially submitted an article posted on wpbf.com; however, the article did not contain the author of the material. In response to the Director's RFE, the Petitioner claimed the article was authored by [redacted] and the Petitioner repeats this assertion on appeal. However, the Petitioner does not corroborate his assertion with supporting documentation showing the authorship of the article. Thus, the Petitioner did not establish the required author of the material consistent with the regulation at 8 C.F.R. § 204.5(h)(3)(iii). Moreover, the article does not indicate published material about the Petitioner relating to his work in the field. Instead, the article discusses Miami, Florida being selected to host the 2026 World Cup with a quote by the Petitioner indicating how he loves soccer.

Likewise, the Petitioner initially provided an article, with translation, published in *Milenio*. However, neither the article nor translation indicates the author of the article. In response to the Director's RFE, the Petitioner claimed the article was authored by [redacted] and the Petitioner repeats this assertion on appeal. The Petitioner does not corroborate his assertion with supporting documentation nor does not article or translation show the author. Furthermore, similar to the postings on adevales.com and lado.mx, the article discusses the sports entertainment approach, including background information provided by the Petitioner, but the article does not reflect published material about the Petitioner consistent with this regulatory criterion.

Moreover, in response to the Director's RFE, the Petitioner submitted a self-authored article published in *Reforma* and posted on reforma.com. However, the article discusses the sports entertainment concept and is not published material about the Petitioner relating to his work.

Notwithstanding the above, the record contains two articles posted on lanoticia.com and produ.com reflecting published material about the Petitioner relating to his work, including the required titles, dates, and authors of the material. However, the Petitioner did not establish the major status of either website.[3] Although he provided visit figures from similarweb.com for lanoticia.com (367,000 visits) and produ.com (147,000 visits), the Petitioner did not demonstrate the significance or relevance of these numbers to show the major status of the websites.[4] The Petitioner, for example, did not compare

[2] Both the article and translation spell the author's first name as '[redacted]'

[3] The Petitioner does not claim, nor does the record reflect, the professional nature of the websites.

[4] *See* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(2)(appendix) (providing that evidence of published material in professional or major trade publications or in other major media publications 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).

the data to the data of other websites enjoying major status. Moreover, similarweb.com reflects that lantocia.com and produ.com have global rankings of 180,952 and 429,264, respectively. Here, the Petitioner did not show how such global rankings are tantamount to major media status.[5]

Similarly, the Petitioner submitted "About" screenshots from lanoticia.com indicating the digital version "is a local and independent communication medium" and screenshots from noticiasnewswire.com advertising that produ.com "has been the leading provider of content for television, advertising and technology professionals in Latin America, Spain and the US Hispanic Market" and "offers three free newsletters that reach more than 30,000 decision-makers and executive professionals every day." However, the Petitioner did not offer independent, objective evidence establishing the major status of the websites. *See Braga v. Poulos*, No. CV 06 5105 SJO (C.D.C.A. July 6, 2007), *aff'd* 2009 WL 604888 (9th Cir. 2009) (concluding that self-serving assertions on the cover of a magazine as to the magazine's status is not reliant evidence of a major medium).[6] Further, the self-serving assertions do not demonstrate that the websites enjoy major media standings.

For the reasons discussed above, the Petitioner did not show he meets this criterion.

## III. CONCLUSION

The Petitioner did not establish he satisfies the criterion relating to published material. Although the Petitioner also claims eligibility for the leading or critical role criterion at 8 C.F.R. § 204.5(h)(3)(viii), we need not reach this additional ground because the Petitioner cannot fulfill the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3). We also need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. Accordingly, we reserve these issues.[7]

Nevertheless, we have reviewed the record in the aggregate, concluding 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. *Matter of Price*, 20 I&N Dec. 953, 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), *aff'd*, 2023 WL 1156801 (D.C. Cir. Jan. 31, 2023) (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.

[5] For the same reasons, although he submitted figures from similarweb.com for adevaldes.com, lado.mx, wpbf.com, and reforma.com, the Petitioner did not show the significance or relevance of the visits or numbers. In addition, while the Petitioner provided internet visitor statistics from similarweb.com and statista.com for milenio.com, the record does not reflect an article posted on milenio.com. Rather, the Petitioner presented evidence of an article printed in *Milenio* and did not offer evidence establishing the major status of *Milenio*. *See, e.g., Victorov v. Barr*, No. CV 19-6948-GW-JPRX, 2020 WL 3213788, at *8 (C.D.C.A. Apr. 9, 2020).

[6] The Petitioner also provided a self-serving "Media Kit" for [redacted]

[7] *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).

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 the significance of his work is indicative of the required sustained national or international acclaim or 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 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 him 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.