U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 26378313

Date: MAY 18, 2023

Appeal of Texas Service Center Decision

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

The Petitioner describes himself as a "medical doctor specializ[ing] in lawsuit and health rights," who seeks employment as a legal consultant specializing in medical malpractice litigation. He 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 that the record did not establish that the Petitioner had satisfied at least three of ten initial evidentiary criteria, as required. The Director also concluded that the Petitioner had not shown that his entry into the United States will substantially benefit prospectively the United States. 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. These individuals must seek to enter the United States to continue work in the area of extraordinary ability, and their entry into the United States will substantially benefit 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 their achievements in the field through a one-time achievement in the form of a major, internationally recognized award. Or the petitioner can submit evidence 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. If those standards do not readily apply to the individual's occupation, then the regulation at 8 C.F.R. § 204.5(h)(4) allows the submission of comparable evidence.

Once a petitioner has met the initial evidence requirements, the next step is a final merits determination, in which we 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 earned a medical degree in Brazil, and practiced emergency medicine there from 2010 to 2014. He then worked for "a public company that conducts the entrance medical exams for some public jobs in Brazil" from 2014 to 2018. He has also worked for Brazilian courts as a medical advisor for various types of litigation. He established a legal consulting company in 2017. The Petitioner has served on the *Conselho Regional de Medicina do Distrito Federal* (CRM-DF) (Board of Physicians of the Federal District), which has disciplinary authority over physician conduct, and the *Associação Brasileira de Medicina Legal e Perícias Médicas do Distrito Federal* (ABMLPM-DF) (Federal District Board of Forensic Medicine). The Petitioner intends "to study law in the US as soon as possible," and to assist lawyers with medical malpractice litigation, while continuing to work remotely for employers and organizations in Brazil.

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 claimed to have submitted evidence, or comparable evidence, relating to five of the criteria, pertaining to memberships in associations; published material; participation as a judge of the work of others; original contributions of major significance; and leading or critical roles.

The Director concluded that the Petitioner's work with CRM-DF satisfies the criterion at 8 C.F.R. § 204.5(h)(3)(iv), which entails judging the work of others. On appeal, the Petitioner asserts that he also meets the other four claimed criteria, either directly or through comparable evidence.

Upon review of the record, we agree with the Director that the Petitioner has satisfied one criterion, pertaining to judging. We will discuss the other claimed criteria below.

> *Documentation of the alien'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 Petitioner documented his membership in CRM-DF and ABMLPM-DF, but has not shown that these organizations are associations that require outstanding achievements of their members, as judged by recognized national or international experts.

The Petitioner submitted a letter from the president of CRM-DF, who cited article 12 of Federal Council of Medicine Resolution No. 1974/11, which states: "The doctor must not allow his name to be included in contests . . . to choose the 'doctor of the year,' 'outstanding,' 'best doctor,' or other denominations that aim at promotional or advertising purposes." The president of CRM-DF stated that, because of this regulation, "[i]t is . . . forbidden to participate in an association that needs outstanding achievements."

The Petitioner stated that, because of the rule described above, the regulatory language does not apply to physicians in Brazil, and therefore the Director should accept comparable evidence under 8 C.F.R. § 204.5(h)(4). It is not sufficient for the Petitioner to claim or establish that a particular criterion does not apply; the Petitioner must also establish that the substitute evidence is "comparable" to the type of evidence described in the criterion. *See generally* 6 *USCIS Policy Manual* F.2 appendix, https://www.uscis.gov/policy-manual. Here, the Petitioner has not shown that his memberships are comparable to the memberships described at 8 C.F.R. § 204.5(h)(3)(ii).

The Brazilian regulation that created "Regional Councils of Medicine," including CRM-DF, indicates that members "will be chosen by secret ballot" cast by "the physicians regularly registered in each Regional Council." This information shows that CRM-DF members are chosen by all participating local physicians, rather than by nationally or internationally recognized experts.

Furthermore, the Petitioner has not established that CRM-DF is an "association in the field." The record shows it to be a government-established disciplinary body, whose members have official duties and receive "daily allowances" and other "compensation," according to the submitted regulations. The Petitioner referred to his position at CRM-DF as a "job" with a "salary." Employment is not the same as membership in an association.

The record contains less information about ABMLPM-DF. A letter from the organization's treasurer refers to the entity as "a private association responsible for knowledge of the correct practice of the profession." The letter does not explain the criteria that one must meet in order to join the organization.

The Director concluded that the Petitioner had not established membership in qualifying associations. On appeal, the Petitioner asserts that his election to leadership positions in CRM-DF and ABMLPM-DF, along with his invitation to testify before the Brazilian Senate, demonstrates his recognition in the field. Senate testimony, however, does not constitute or reflect membership in an association. Also, leadership positions are not, themselves, memberships in associations. A separate criterion at 8 C.F.R. § 204.5(h)(3)(viii), discussed below, pertains to leading or critical roles.

The Petitioner has not established that his membership in CRM-DF and ABMLPM-DF is comparable to the memberships described at 8 C.F.R. § 204.5(h)(3)(ii).[1]

> *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.*

[1] If this decision had reached a final merits determination, the narrow geographic jurisdiction of the two organizations would have come into play. The statute requires recognition at a national or international level. CRM-DF and ABMLPM-DF, by nature, are district-level organizations with jurisdiction limited to the vicinity of Brazil's capital city.

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 again cited the Federal Council of Medicine resolution quoted above, claiming that it prohibits "publication of journalistic material promoting [a] doctor's work." The Petitioner does not submit any independent evidence to support this interpretation of the regulation. The president of CRM-DF stated, "we discourage the publication of journalistic material promoting the doctor's work," but the cited regulation refers specifically to "promotional or advertising purposes," rather than to journalism, and the record does not establish CRM-DF's authority to prevent the publication of news articles (as distinct from advertisements) about physicians.

Initially and again on appeal, the Petitioner has asked the Director to consider, as comparable evidence, video footage of his testimony on the website of the Brazilian Senate. The Petitioner did not submit documentary evidence to establish that viewership of such testimony on the Senate website is comparable to that of major media. *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2 appendix, for information about the types of evidence that can establish that published material meets the regulatory requirements.

Furthermore, the Petitioner did not submit the required English translation of the testimony, or establish that his testimony was about him, pertaining to his work in the field. From its surrounding context, it appears that the Petitioner's testimony was about the issue of disability benefits for individuals with monocular vision.

The Petitioner has not met the requirements of this criterion.

Evidence of the alien'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).

The Petitioner submitted documentation showing that Brazil passed legislation designating the loss of vision in one eye as a disability for legal purposes. The designation entitles affected persons to certain public benefits. The Petitioner had been involved in related litigation and testified to the Brazilian Senate in support of this legislation.

In the denial notice, the Director quoted from letters submitted in support of the petition, and concluded that, while the Petitioner had made original contributions, he had not shown their major significance. The Director did not specifically address the Brazilian legislation.

On appeal, the Petitioner asks: "How is it that the creation of a law, which impacts thousands of lives nationwide, does not represent a significant impact in the field?" While the record shows that the Petitioner testified in favor of the legislation in question, the Petitioner is not a legislator, and he does not claim to have drafted the statutory text or to have initiated the efforts to pass the law. Rather, he was one of several activists who each contributed in various ways to the passage of the statute.

A translated printout from the Senate's website indicates that the Petitioner was one of 14 people who testified at a July 2019 hearing about the proposed legislation. The law was enacted nearly two years later, in March 2021. The evidence in the record does not show that the Petitioner is sufficiently responsible for the passage of the legislation that the law can be considered as his contribution to the field.

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).

The Petitioner claimed to satisfy this criterion [redacted] CRM-DF, [redacted] ABMLPM-DF, and his ownership of a consulting organization. The Director requested "[o]bjective, documentary evidence to demonstrate the distinguished reputation of the organizations or establishments for which the beneficiary performed in leading or critical roles. The evidence should document the organizations' or establishments' eminence, distinction, or excellence."

In response, the Petitioner stated that the organizations all have distinguished reputations because CRM-DF "is a government agency created by law, responsible for regulating and supervising the correct exercise of medicine" and ABMLPM-DF "represents all Forensics doctors in" Brazil's Federal District. Regarding his company, the Petitioner stated: "Lawyers from all over Brazil seek our services," and that the company's "performance . . . was enough to draw the attention of the Federal Senate," which invited the Petitioner to testify.

The Director concluded that the Petitioner did not show that the organizations "possess a level of eminence or distinction that sets them apart from the others and the information provided has not established that the organizations have a distinguished reputation."

On appeal, the Petitioner states that CRM-DF "is the highest organization to regulate and supervise the practice of medicine. We regulate and judge medical malpractice in our state. This is the most elevated position for a medical doctor, especially for a forensic doctor. . . . There is none higher than that." The issue here, however, is not the extent of CRM-DF's local authority, but whether the organization has a distinguished reputation. CRM-DF is a district-level disciplinary authority, and the Petitioner did not show that it has a distinguished reputation in comparison to over 20 similar bodies with authority over other federative units and states in Brazil.[2]

The Petitioner has not established that the organizations in which he performed in leading or critical roles have distinguished reputations.

The above conclusions determine the outcome of the appeal. Therefore, we reserve the separate issue of whether the Petitioner's entry into the United States will substantially benefit prospectively the United States.[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 ten lesser 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

[2] As discussed earlier above, the narrow geographic jurisdictions of CRM-DF and ABMLPM-DF would have been significant factors if this decision had reached a final merits determination.

[3] *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, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

that 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 seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward the top. U.S. Citizenship and Immigration Services 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). The Petitioner's election to leadership positions on local boards does not attest to recognition on a national or international scale. The record does not establish sustained national or international acclaim as required by section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate that the Petitioner 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). Here, the record indicates that the Petitioner has had success in the area of malpractice litigation, but the record does not offer a sufficient basis to compare the scope and scale of the Petitioner's efforts to that of others engaged in similar work. With no objective, evidentiary basis for comparison, the Petitioner has not shown that he has reached the top of his field.

The Petitioner has not demonstrated eligibility as an individual of extraordinary ability. We will therefore dismiss the appeal.

ORDER: The appeal is dismissed.