U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28364074

Date: OCT. 2, 2023

Appeal of Texas Service Center Decision

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

The Petitioner 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 Texas Service Center denied the petition, concluding that the record does not establish the Petitioner satisfied at least three of the 10 initial evidentiary criteria. 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 [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 that 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 Petitioner stated that he "has made an original business-related contribution of major significance to the field of Enterprise Resource Planning – Business Management Software." He further indicated that he intends "to continue working in the field of ERP – Business Management Software and develop new programs and software to improve client operations." The Petitioner did not assert that he received a major, internationally recognized award under the regulation at 8 C.F.R. § 204.5(h)(3), and the Director found that the record does not support the conclusion; 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 stated that he satisfied the criteria at 8 C.F.R. § 204.5(h)(3)(iv)-(v), (viii)-(ix). However, the Director concluded that the Petitioner satisfied only the criteria at 8 C.F.R. § 204.5(h)(3)(viii), and the record supports the Director's conclusion. On appeal, the Petitioner reasserts that he satisfies the criteria at 8 C.F.R. § 204.5(h)(3)(iv)-(v) and (ix), in addition to the criteria at 8 C.F.R. § 204.5(h)(3)(viii). For the reasons addressed below, we conclude that the record does not satisfy at least three of the 10 criteria at 8 C.F.R. § 204.5(h)(3).

> *Evidence of the [noncitizen'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).

The Director acknowledged that the record contains "certificates from the [redacted] Foundation for Women thanking him for his participation as a mentor the programs [sic] in 2017 and 2019." The Director also acknowledged that the record contains "a certificate from [redacted] thanking him for supporting its Diversity Externship." However, the Director concluded that the record does not satisfy the criterion at 8 C.F.R. § 204.5(h)(3)(iv) because it does not establish that his role as a mentor acted "as a judge of the work of others in the same or an allied field," as required.

On appeal, the Petitioner asserts that "the meaning of the word 'Judge' or 'Judging' . . . is broad enough to include actions by people who have not been expressly named a 'judge' or 'reviewer' for a specific event or activity." The Petitioner then reiterates information in the record about his mentor

"role at the [redacted] Foundation."[1] The record does not support the Petitioner's assertion in the record that his role as mentor for the [redacted] Foundation for Women satisfies the criterion at 8 C.F.R. § 204.5(h)(3)(iv). In response to the Director's request for evidence, the Petitioner submitted an undated, two-page document titled "The Role of the Mentor," bearing the [redacted] Foundation for Women logo on both pages. In relevant part, the [redacted] Foundation for Women document states that a mentor "support[s] their mentee to articulate goals . . . . A mentor listens to their mentee and *provides them with the opportunity to evaluate their own progress*" (emphasis added). Although "a mentor gives their mentee an opportunity to reflect on where they are and what progress they are making in their entrepreneurial journey [and] offers perspective to their mentee, [*a*] *mentor should not offer solutions*; instead, they should *provide support to bring out their mentee's wisdom*" (emphasis added).

Although we acknowledge that not all those who judge the work of others bear the title of "judge," nevertheless, a role defined by providing others "the opportunity to evaluate their own progress" and providing support for others to bring out their own wisdom is inconsistent with the plain-language meaning of the phrase "judge of the work of others," provided at 8 C.F.R. § 204.5(h)(3)(iv). Thus, the [redacted] Foundation for Women's document in the record does not support the conclusion that the Petitioner's role as mentor for that organization was in the capacity of a judge of the work of others, as contemplated by the regulation at 8 C.F.R. § 204.5(h)(3)(iv). The record does not satisfy the criterion at 8 C.F.R. § 204.5(h)(3)(iv).

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

The Director acknowledged that the Petitioner "submitted evidence of the patent [for an artificial intelligence-based chat bot platform] which lists him as the first inventor." However, the Director noted that "the issuance of a patent, by itself, does not verify the significance of the innovation patented because the patent's significance is not evaluated during the application process." The Director observed that the record does not establish how the Petitioner's chat bot platform "demonstrates the major significance of his contribution in the field," as required by the criterion at 8 C.F.R. § 204.5(h)(3)(v).

On appeal, the Petitioner asserts that the following evidence in the record satisfies the criterion at 8 C.F.R. § 204.5(h)(3)(v): "an article published by [redacted] in 2018 detailing the sale of the product and the product's impact on the client," along with a "letter from the representative of [redacted] client, [redacted], testifying to the tremendous impact and value that the company gained by purchasing the [chat bot platform]" and evidence of contracts between [redacted]

The Petitioner does not establish on appeal that his contributions are of major significance to the field. Although the documents address how the chat bot platform may be significant to [redacted] they do not address how the chat bot platform may be significant to the broader field of enterprise resource planning (ERP), or indeed how it amounts to "major significance to the field," as

[1] The Petitioner did not address the Director's conclusion regarding the [redacted] certificate on appeal and, thus, he has waived that issue.

required by the criterion at 8 C.F.R. § 204.5(h)(3)(v), beyond one company and one of its clients. On the contrary, the Petitioner acknowledged that he "invented his chatbot around the same time Apple Siri, IBM Watson[,] Google Assistant[,] Microsoft Cortana[,] and Amazon Alexa became prevalent." However, the record does not reconcile how the Petitioner's chat bot platform used by a single client is of major significance to the field of ERP—or any other particular field—given numerous other, prevalent chat bot platforms developed "around the same time." Because the record does not establish how the Petitioner's contribution is of major significance to the field, it does not satisfy the criterion at 8 C.F.R. § 204.5(h)(3)(v).

We need not determine whether the record satisfies the criterion at 8 C.F.R. § 204.5(h)(3)(ix) because, even if it did, the record would not satisfy at least three of the 10 criteria at 8 C.F.R. § 204.5(h)(3). Accordingly, we reserve our opinion regarding whether the record satisfies the criterion at 8 C.F.R. § 204.5(h)(3)(ix). *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).

III. CONCLUSION

The Petitioner has not submitted the required initial evidence of either a one-time achievement or evidence that meets 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. at 25; *see also Matter of L-A-C-*, 26 I&N Dec. at 526 n.7. 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 that 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.