U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28423326

Date: OCT. 6, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur, 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 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's claimed business ventures in Argentina include car rental franchises, a used car dealership, a travel agency, and e-commerce platforms for apparel sellers. The Petitioner entered the United States in 2018 as an E-2 treaty investor, to run a sporting goods store. He now manages a real estate investment firm in the southeastern United States.

The Petitioner filed the appeal in late March 2023, submitting a short statement and indicating that he would submit a brief within 30 days. More than six months have since elapsed, and the record contains no further submission from the Petitioner. We consider the record to be complete as it now stands.

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 initially claimed to have satisfied four of these criteria, summarized below:

- (iii), Published material about the individual in professional or major media;
- (iv), Participation as a judge of the work of others;
- (viii), Leading or critical role for distinguished organizations or establishments; and
- (ix), High remuneration for services.

The Director concluded that the Petitioner had not met any of the criteria.

On appeal, the Petitioner states:

> A final merits determination of [the submitted] evidence found that [the Petitioner] did not meet the required high level of expertise for the extraordinary ability immigrant classification. The [Director's] analysis of the statutory criteria was misaligned with the proffered evidence and the statement of law that supported the denial misapplied the standard of review and conveyed internally inconsistent application of the grounds, contradicting itself in the text, and applying, what appears to be [a] hybrid standard of review, using both the framework for the Field of Science Business [sic], interchangeably.

The Petitioner's appeal statement refers to a final merits determination, but the Director's decision included no final merits determination because the Director concluded that the Petitioner had not met at least three of the threshold criteria. The Petitioner claims that the Director incorrectly analyzed the evidence but does not elaborate in any detail. Regarding the final part of the quoted passage, the

Petitioner appears to argue that the Director sometimes categorized the Petitioner's area of claimed expertise as "science," and other times as "business." The Petitioner does not, however, explain how this claimed "hybrid standard of review" affected the outcome of the petition. The statute and regulations do not establish separate standards of review for individuals in business and those in the sciences.

In the denial notice, the Director stated that the Petitioner submitted no new evidence in response to a request for evidence (RFE). On appeal, the Petitioner asserts that his "submitted evidence [in response to the] Request for Evidence was not properly reviewed." The Petitioner does not identify any specific evidence he claims to have submitted in response to the RFE. The RFE response currently in the record consists primarily of a 17-page brief. The arguments in that brief warrant consideration, but the brief itself is not evidence. *See Matter of S-M-*, 22 I&N Dec. 49, 51 (BIA 1998) (stating that "statements in a brief, motion, or Notice of Appeal are not evidence and thus are not entitled to any evidentiary weight").[1]

Because the Petitioner's RFE response did not include any evidence relating to the eligibility criteria, there is no support for the Petitioner's assertion on appeal that he "submitted evidence [in response to the] Request for Evidence [that] was not properly reviewed."

The last substantive paragraph of the Petitioner's appeal statement addresses two of the regulatory criteria that he claims to have satisfied:

> Furthermore, the Service committed a material error that prejudiced the outcome of [the petition] by not following Service Policy in the adjudication of his submitted evidence. For example, the Service did not properly consider the evidence of the distinguished reputation of the organizations for which [the Petitioner] held a leading or critical role, or credit the media about him, which was in major media, and expressly identifies him by name in his capacity for the work being submitted in support of EB1 eligibility.

The Petitioner, on appeal, alleges no specific errors regarding the other two regulatory criteria, relating to judging the work of others under 8 C.F.R. § 204.5(h)(3)(iv) and high remuneration under 8 C.F.R. § 204.5(h)(3)(ix). Because the Petitioner does not contest the Director's conclusions regarding those criteria, the Petitioner has waived appeal on those issues. *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. US. Att'y Gen.*, 401 F .3d 1226, 1228 n. 2 (11th Cir. 2005); *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885 at *1, 9 (E.D.N.Y. Sept. 30, 2011) (finding the plaintiff's claims to be abandoned as he failed to raise them on appeal to the AAO).

We acknowledge that the Petitioner states, without elaboration, that his response to the RFE "demonstrated that [he] meets the requirements" of the four claimed criteria. But this is a general statement of eligibility, rather than a response to the Director's specific conclusions regarding those

[1] The RFE response letter referred to only one attached exhibit, consisting of copies of the Petitioner's employment authorization documents. This evidence does not pertain to the eligibility criteria for extraordinary ability. The Petitioner submitted these materials to address a separate issue relating to his nonimmigrant status.

criteria. *See Desravines v. US. Att'y Gen.*, 343 F. App'x 433, 435 (11th Cir. 2009) (indicating that a passing reference in the arguments section of a brief without substantive arguments is insufficient to raise that ground on appeal). An appellant who does not properly challenge one or more of the grounds for denial has abandoned any challenge of that ground or grounds. *See Sapuppo v. Allstate Floridian Ins. Co.*, 739 F.3d 678, 680 (11th Cir. 2014); *United States v. Cooper*, No. 17- 11548, 2019 WL 2414405, at *3 (11th Cir. June 10, 2019).

Below, we will discuss the relevant evidence pertaining to the two eligibility criteria discussed on appeal.

> *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).

In the initial filing, the Petitioner stated that he "has performed in a leading or critical role for [redacted] all organizations of distinguished reputation" in the Petitioner's native Argentina. [redacted] is an online clothing seller; [redacted] is a car rental company; [redacted] is an online used car dealership; and [redacted] is a travel agency.

On appeal, the Petitioner states that the Director "did not properly consider the evidence of the distinguished reputation of the organizations for which [the Petitioner] held a leading or critical role." The Director, however, did not state any conclusions about the organizations' reputations. Rather, the Director determined that "the evidence does not establish that the petitioner's role within these companies was leading or critical." Therefore, the Petitioner's statement on appeal does not address the stated basis for denial.

The Director's conclusions revolve around the observation that the Petitioner relied on letters from individuals who made assertions of objective fact without substantiating their claims or sufficiently establishing their personal knowledge of the matters discussed. The Director raised this concern in the RFE and again in the denial, but the Petitioner has not directly addressed this issue.

Upon review of the evidence, we agree with the Director on the broad conclusion that the Petitioner has not met his burden of proof relating to this criterion, although we disagree on some of the specifics.

The Petitioner submitted letters from individuals identified as the former chief financial officer of [redacted] a former sales and marketing manager for [redacted], a co-founder of [redacted] and a banker who was involved in the purchase of [redacted] These individuals describe various activities that the Beneficiary undertook at those companies, stating, for instance, that the Petitioner "created an entirely new fulfillment process that . . . likely saved" [redacted] and that he took "the lead in reintroducing the [redacted] brand back to Argentina."

In the RFE, the Director acknowledged the submitted letters but stated that, without corroboration, the letters by themselves do not satisfy the regulatory requirements. The Director asked for "evidence which supports the claims and contributions made by the authors of the letters."

In response, the Petitioner asserted that the Director's RFE violated the Petitioner's right to due process by incorporating elements of a separate, unclaimed criterion at 8 C.F.R. § 204.5(h)(3)(v), pertaining to original contributions of major significance. We acknowledge that the language taken from that criterion

does not apply to the criterion under discussion, but this error by the Director does not relieve the Petitioner from having to comply with properly applicable requirements. The Director's request for corroborating evidence stems from the Petitioner's burden of proof, rather than from the Director's mistaken reliance on an inapplicable regulation.

The Petitioner cited 8 C.F.R. § 204.5(g)(1), which states that evidence of qualifying experience must take the form of letters from employers. The *USCIS Policy Manual* acknowledges the requirement for letters from employers, and adds additional considerations:

> [L]etters from persons with personal knowledge of the significance of the person's leading or critical role can be particularly helpful [when determining a leading or critical role], so long as the letters contain detailed and probative information that specifically addresses how the person's role for the organization, establishment, division, or department was leading or critical. Evidence of experience must consist of letters from employers.

See generally 6 *USCIS Policy Manual* F.2(B)(1), https://www.uscis.gov/policy-manual. We note that the individual attesting to the Beneficiary's work with [redacted] does not claim to have been an official of that company. Rather, he described himself as a banker who invested in the company as a means of "nourishing [his] passive income." As such, the Petitioner has not established that this letter is from his employer.

While the USCIS Policy Manual emphasizes the importance of letters to establish a person's role at a given organization or establishment, such statements should be corroborated by documentary evidence in the record. *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(3). The Petitioner's initial submission included no documentary evidence of his roles at the companies named above.

The Petitioner also asserted, in the RFE response, that he already "did submit objective evidence to support his claims." The initial submission, however, does not contain such evidence.

The initial submission included printouts of media articles discussing his various claimed businesses, but the Petitioner's name does not appear in any of the articles, and therefore they do not corroborate claims regarding the nature of his roles with those companies. The only submitted online material linking the Petitioner with [redacted] is a company profile in *Gust*, naming four "team" members, including the Petitioner. The other three named team members also have listed titles ("CMO, "CFO," and "CTO"); the Petitioner is identified only as a co-founder of the company, with no other title and no substantive discussion of his role there. An article from *Infonegocios* discusses the company's early years, and names the other three team members as the company's founders, but it includes no mention of the Petitioner. Likewise, submitted articles about [redacted] growth in Latin America and a published interview with [redacted] co-founder do not mention the Petitioner.

In the denial notice, the Director stated that the submitted letters lacked some important information, and that the Petitioner had not submitted any further evidence in response to the RFE. As noted above, the Petitioner does not address or overcome this conclusion on appeal.

Because the Petitioner has not submitted consistent evidence to establish his leading or critical roles with the named companies, we need not address the separate question of whether those companies have a distinguished reputation.

The Petitioner has not overcome the Director's conclusions, and has not met his burden of proof regarding this criterion.

> *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 submitted translated printouts of four online articles, all published in early October 2009 about a brand of e-cigarette. Each of the four articles quotes the Petitioner and identifies him as the marketing director of the cigarette's manufacturer, but contains no further information about him.

In the RFE, the Director stated: "The material . . . only cites, quotes, or references the petitioner. . . . The articles merely quote the petitioner [regarding] the product in his official capacity as marketing director. There is no discussion of the petitioner or his work in the field."

In response, the Petitioner quoted 6 *USCIS Policy Manual*, *supra*, at F.2(B)(3):

> [T]he person and the person's work need not be the only subject of the material; published material that covers a broader topic but includes a substantial discussion of the person's work in the field and mentions the person in connection to the work may be considered material about the person relating to the person's work.

The Petitioner stated that the articles meet the above requirements, because his "work in the field" consisted of "marketing of the product," and, by quoting the Petitioner, the article "mentions [him] in connection to the work."

The Petitioner's assertions are not persuasive. The articles do not include "a substantial discussion of [the Petitioner's] work in the field." The "substantial discussion" is about a new brand of e-cigarette and an explanation of how "vaping" differs from smoking. Quotations from the Petitioner describing that product do not amount to substantial discussion of the Petitioner's work as a marketing director. The articles do not contain any information about the Petitioner except his name and title.

In denying the petition, the Director repeated the conclusion that the articles are not about the Petitioner, relating to his work in the field. The Director also identified other shortcomings in the evidence, such as lack of author attributions, but we need not explore those other issues here because the issue already discussed is enough to show that the Petitioner has not satisfied the requirements of the criterion.

On appeal, the Petitioner states that the Director did not "credit the media about him, which was in major media, and expressly identifies him by name in his capacity for the work being submitted in support of EB1 eligibility." We have already explained why the articles are not about the Petitioner.

Furthermore, the Petitioner has not established that the articles relate to his "work in the field for which classification is sought" as the regulations require. The Petitioner seeks classification as an individual of extraordinary ability as an "entrepreneur," who intends to run a real estate equity firm. The Petitioner has not established, or claimed, that he worked for the e-cigarette company as an entrepreneur. Rather, the articles describe him as the company's "marketing director."

The Petitioner has not met his burden of proof to satisfy the requirements of this regulatory criterion.

As noted above, the Petitioner has waived appeal on the other two claimed criteria, relating to remuneration and judging. Furthermore, the above conclusions relating to two of the claimed four criteria are sufficient to show that the Petitioner does not meet the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3). Detailed discussion of the remaining criteria cannot change the outcome of this appeal. Therefore, we reserve these issues.[2]

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 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 has not shown recognition of his work at a level that indicates the required sustained national or international acclaim or demonstrates 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 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).

We have already discussed how the media articles naming the Petitioner do not refer to him as an entrepreneur. Furthermore, those articles all date from a two-day period in October 2009, more than 12 years before he filed the petition. Therefore, they do not demonstrate sustained media attention. The Petitioner also claims high salary or remuneration, but he has not submitted any evidence that documents his salary, remuneration, or equity holdings from any source. He submitted articles about the sale of a company he claims to have co-founded, but those articles do not indicate that he received any of the proceeds from the sale. The letters in the record are from individuals who claim to have worked directly with the Petitioner, and therefore are not direct evidence of any broader recognition consistent with national or international acclaim.

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

ORDER: The appeal is dismissed.

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[2] *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).