U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 35163329

Date: DEC. 16, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, an integration architect, seeks classification as an individual of extraordinary ability in energy efficiency. *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 Petitioner did not receive a one-time achievement or satisfy at least three of the 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)(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

The Director determined the Petitioner did not show his receipt of a major, internationally recognized award under 8 C.F.R. § 204.5(h)(3). Moreover, the Director concluded the Petitioner did not meet any of the six claimed alternate regulatory criteria under 8 C.F.R. § 204.5(h)(3)(i)-(x). On appeal, the Petitioner maintains his qualification for three categories of evidence.[1] For the reasons discussed below, the Petitioner did not demonstrate he meets at least three evidentiary criteria.

The Petitioner argues that he fulfills the regulation at 8 C.F.R. § 204.5(h)(3)(v), which requires "[e]vidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field," based on four recommendation letters. USCIS determines whether the person has made original contributions in the field.[2] USCIS then determines whether the original contributions are of major significance to the field.[3] Examples of relevant evidence include, but are not limited to: published materials about the significance of the person's original work; testimonials, letters, and affidavits about the persons original work; documentation that the person's original work was cited at a level indicative of major significance in the field; and patents or licenses deriving from the person's work or evidence of commercial use of the person's work.[4]

Although the letters praise the Petitioner, the letters do not demonstrate that his contributions resulted in major significance in the field. Rather, the letters limit the relevance of the Petitioner's contributions to his employers. For instance, K-C-S- discusses the Petitioner's "most recent work at [redacted] where he was instrumental in designing and developing BEN (Business Event Notification) framework," and "[t]his has resulted in annual saving of over a million USD. Similarly, R-L- states that the Petitioner's role is super critical to [redacted] . . . where he was instrumental in designing, developing and delivering

[1] Any ground of ineligibility that is not raised on appeal is waived. *See Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (citing *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012)).
[2] *See generally* 6 USCIS Policy Manual F.2(B)(1), https://www.uscis.gov/policymanual.
[3] *Id.*
[4] *Id.*

products . . . ." Here, the letters do not establish the significance of his contributions beyond [redacted] or show how those contributions have been considered to be majorly significant in the overall field. *See 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).

Likewise, A-V- stated that he has "been greatly impressed with [the Petitioner's] most recent work at [redacted] where [he] was instrumental in rolling out new software to entire fleet of 2500+ ATM's with enhanced feature and experience to customer," and "[t]his integration helped in monitoring the currency value in real time which saved millions of dollars to bank in options." Again, the letter does not discuss how the Petitioner's involvement in rolling out new software somehow impacted or influenced the overall field rather than limited to his employer, [redacted]

Finally, S-P- indicated that the Petitioner "has contributed to the growth of [redacted] and has provided our clients with great insights by delivering solutions, white papers, and blogs." Once again, the letter reflects the Petitioner's contributions to his employer rather than establishing how those contributions have been majorly significant in the greater field.

Here, the letters briefly indicate the importance of the Petitioner's contributions to his employers without showing the impact or influence in the overall field in a major way. While the letters briefly indicate how the Petitioner has affected his employers, they do not further elaborate and explain how his employer projects translated into contributions of major significance in the field.[5]

Detailed letters from experts in the field explaining the nature and significance of the person's contribution may also provide valuable context for evaluating the claimed original contributions of major significance, particularly when the record includes documentation corroborating the claimed significance.[6] Submitted letters should specifically describe the person's contribution and its significance to the field and should also set forth the basis of the writer's knowledge and expertise.[7] In this case, the letters lack specific, detailed information explaining how the Petitioner has made original contributions of major significance in the field. USCIS need not accept primarily conclusory statements. *1756, Inc. v. The U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.C. Dist. 1990).

For the reasons discussed above, considered both individually and collectively, the Petitioner has not shown he has made original contributions of major significance in the field.

III. CONCLUSION

The Petitioner did not establish he satisfies the original contributions criterion. Although the Petitioner also argues eligibility for the leading or critical role criterion under 8 C.F.R. § 204.5(h)(3)(viii) and the high salary criterion under 8 C.F.R. § 204.5(h)(3)(ix), we need not reach these additional grounds because the Petitioner cannot fulfill the initial evidentiary requirement of three under 8 C.F.R.

[5] *See generally* 6 USCIS Policy Manual, *supra*, at F.2(B)(1) (analysis under this criterion focuses on whether the person's original work constitutes major, significant contributions in the field).
[6] *See generally* 6 USCIS Policy Manual, *supra*, at F.2(B)(1).
[7] *Id.*

§ 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.[8]

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. 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 the Petitioner 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.

[8] *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (per curiam) (holding that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision).