U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33564231

Date: DEC. 18, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, a CEO/manager/entrepreneur, seeks classification as an individual of extraordinary ability in business. 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 that the record did not show that the Petitioner meets at least three of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Director determined that while the Petitioner provided evidence showing that she performed in a leading or critical role under 8 C.F.R. § 204.5(h)(3)(viii), she did not establish eligibility under any other criteria. Furthermore, the Director concluded that the Petitioner did not establish that she is coming to the United States to continue working in her area of extraordinary ability. 8 C.F.R. § 204.5(h)(5).

The matter is now before us on appeal pursuant to 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

An individual is eligible for the extraordinary ability classification if they have extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and their achievements have been recognized in the field through extensive documentation; they 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 prospectively the United States. Section 203(b)(1)(A) of the Act.

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 a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then they must provide 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). The regulation at 8 C.F.R. § 204.5(h)(4) allows a petitioner to submit comparable material if they are able to demonstrate that the standards at 8 C.F.R. § 204.5(h)(3)(i)-(x) do not readily apply to the individual's occupation.

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

Upon a thorough review of the record,[1] we conclude that the Petitioner has not overcome the Director's denial. On appeal, the Petitioner states that she will continue working in her area of extraordinary ability and asserts that she meets three of the initial evidentiary criteria: Participation as a judge, performing in a leading or critical role, and commanding a high salary in relation to others in the field. 8 C.F.R. § 204.5(h)(3)(iv), (viii), and (ix). Since the appeal does not address the Director's conclusions regarding any of the other criteria under 8 C.F.R. § 204.5(h)(3), we consider those issues to be waived. *See, e.g., 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).

In order to establish eligibility for the criterion at 8 C.F.R. § 204.5(h)(3)(ix), petitioners should show that a person's salary or remuneration is significantly high in comparison to that of others working in the field. *See generally* 6 *USCIS Policy Manual* F.2(B)(1), https://www.uscis.gov/policy-manual. Relevant evidence may include tax returns, pay statements, or other evidence of a person's remuneration, as well as comparative wage surveys in the person's field. *Id.* When assessing whether a person's comparison between their wages and wages from surveys is accurate, we consider factors such as the survey's description of the relevant occupation, the salary rate being measured, the location of the survey, and the survey's validity. *Id.*

To establish eligibility for this criterion, the Petitioner submitted evidence including salary information for nurses in [redacted] Brazil, salary information for health services managers and technical responsible nurses throughout Brazil, and employment verification letters stating her wages in

[1] While this decision does not name all of the documents the Petitioner submitted, we have reviewed and considered each one.

positions in Brazil and Utah.[2] The Director concluded that the Petitioner did not provide salary documentation for comparable workers in her field, and so did not demonstrate that her remuneration was significantly high in comparison to such workers.

On appeal, the Petitioner concedes that the positions for which she provided her salary information included managerial responsibilities, and so are not comparable to regular nursing positions, but contends that she nonetheless provided probative evidence for this criterion which the Director overlooked. Upon review, the wage evidence provided is insufficient to establish eligibility, for the reasons below.

The letter from [redacted], the Petitioner's employer from 2016 to 2018, states that her "most recent remuneration" as a health services manager was R$ 16,748.15.[3] On appeal, the Petitioner quotes Brazilian nursing regulations to assert that this position was that of a technical responsible nurse and states that her underlying evidence establishes that she received a significantly high salary from [redacted] The record includes a printout from glassdoor.com indicating that technical responsible nurses in Brazil were paid an average of R$ 3,000 to R$ 5,000 a month as of January 2024. However, the printout also states that this statistic is based on only 20 submitted wages. *See generally* 6 *USCIS Policy Manual, supra*, at F.2(B)(1) (noting that "user-provided salary data . . . may not be a valid comparison if, for example, too few users reported their salaries"). Furthermore, the printout does not differentiate between different regions of Brazil, employee experience levels, or employer types. Therefore, regardless of whether the [redacted] position was comparable to that of a technical responsible nurse, the glassdoor.com salary survey is insufficient to provide a valid point of comparison and establish that the Petitioner's remuneration was significantly high.

The letter from [redacted], the Petitioner's employer from 2013 to 2015, states that she was employed as a nurse in charge of primary health care/primary health/family health/public health, and that her monthly remuneration was R$ 9,825.09. The Petitioner states on appeal that this position is that of a health services manager. The record includes a printout from salario.com stating that Brazilian health services managers were paid an average of R$ 7,123.75 in January 2023. First, we note that the provided survey is for workers employed eight years after the Petitioner left her position at [redacted], which limits its viability as a point of comparison. Second, the survey does not differentiate between different geographical regions, employer types, or worker experience levels. It therefore does not establish the wages of workers who are specifically comparable to the Petitioner. *Id.* Finally, while we acknowledge that the Petitioner's remuneration was higher than the average salary shown in the survey, the survey does not provide salary ranges, percentiles, or other means of establishing whether this difference was sufficiently significant to qualify for this criterion. The Petitioner therefore has not established eligibility under 8 C.F.R. § 204.5(h)(3)(viii) by showing that she received a high salary or other significantly high remuneration for services in relation to others in her field.

[2] Because the Petitioner does not address her Utah wages on appeal, we consider this issue to be waived and will not address it further. *See, e.g., Matter of O-R-E-*, 28 I&N Dec. at 336 n.5.

[3] We note that the letter does not specify whether this remuneration was for one month of work or whether it was calculated on some other basis.

We will reserve the issue of whether the Petitioner qualifies for the judging criterion at 8 C.F.R. § 204.5(h)(3)(iv) since adjudicating this criterion would, at most, establish eligibility for two criteria, which is less than the required three. 8 C.F.R. § 204.5(h)(3). We therefore need not reach this issue or the issue of whether she will continue to work in her area of expertise, and will reserve them. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision).

III. CONCLUSION

The Petitioner has not provided the required initial evidence of either a one-time achievement or documents that meet at least three of the ten criteria at 8 C.F.R. § 204.5(h)(3). The petition will remain denied.

ORDER: The appeal is dismissed.