U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29808503

Date: FEB. 13, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, a marketplace 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 Nebraska Service Center denied the petition, concluding that the Petitioner had not satisfied the initial evidentiary criteria, of which he must meet at least three. In addition, the Director determined that the Petitioner had not established his intent to continue to work in his area expertise in 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 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 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 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).

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 Petitioner claims to have worked as a marketplace entrepreneur in Russia where he specialized in e-commerce. He claims that his achievements in his field of expertise have been recognized on a national level.

A. Evidentiary Criteria

Because the Petitioner has not indicated or established that he has 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 Director determined that the Petitioner only met the plain language requirements of two evidentiary criteria relating to judging the work of others at 8 C.F.R. § 204.5(h)(3)(vi) and authorship of scholarly articles at 8 C.F.R. § 204.5(h)(3)(vi).

On appeal, the Petitioner maintains that he also meets the evidentiary criteria at 8 C.F.R. § 204.5(h)(3) related to published materials (iii) and leading or critical role (viii). The Petitioner does not address or contest on appeal the Director's finding that he does not meet the membership criterion (ii) or the criterion relating to original contributions of major significance (v). Accordingly, we deem these grounds to be waived. An issue not raised on appeal is 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)).

Based on our de novo review, we conclude that the Petitioner has not established that he meets the requirements of at least three criteria.

> *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).

To meet this criterion, the published material must be about the Petitioner and related to his specific work in the field for which classification is sought; it must include the title, date, and author of the material and any necessary translation; and the publication must qualify as a professional publication, major trade publication, or major media publication. 8 C.F.R. § 204.5(h)(3)(iii). With the petition, the Petitioner submitted translated copies of Russian-language articles from various websites.

The Director determined that the Petitioner had not submitted sufficient evidence to satisfy this criterion. In addition to determining that some material was not primarily about the Petitioner, the Director also noted that several online articles lacked the name of the author and the publication date, and had inaccessible or illegible uniform resource locators (URL) as evidence of their publication on the claimed websites. Further, the Director noted that the articles were not supported by citation statistics or independent information about the publications in which they appeared. Accordingly, the Director requested additional evidence to overcome these evidentiary deficiencies. In response, the Petitioner submitted additional articles and maintained that this new evidence, and the initially submitted evidence, satisfied the plain language of this criterion.

In denying the petition, the Director indicated that none of the published material satisfied all requirements stated in the regulation at 8 C.F.R. § 204.5(h)(3)(iii). On appeal, the Petitioner reasserts that the evidence submitted at the time of filing and in response to the request for evidence (RFE) was sufficient and disagrees with the Director's conclusions to the contrary.

We have reviewed the evidence submitted in support of this criterion, including evidence not expressly mentioned in the denial decision, and conclude that the record supports the Director's determination that the Petitioner did not establish that any of the submitted articles satisfy all requirements set forth at 8 C.F.R. § 204.5(h)(3)(iii).

The Petitioner submitted an article featured in [redacted] that discusses him and his work as a marketplace entrepreneur. The Petitioner submitted an "explanatory note" providing information such as the registry documentation for the publication and statements regarding the publication's status and reputation. Although the submitted explanatory note claims that the publication is one or the largest mass media publications in Russia, USCIS need not rely on the self-promotional material of the publisher. *See Braga v. Poulos*, No. CV 06-5105 SJO FMOX, 2007 WL 9229758, at *7 (C.D. Cal. July 6, 2007), *aff'd*, 317 F. App'x 680 (9th Cir. 2009) (concluding that we did not have to rely on a company's self-serving assertions on the cover of a magazine as to the magazine's status as major media).

The Petitioner also submitted captured screenshots from websites such as *Similarweb* and *Wikipedia,*[1] which it inserted into the body of its supporting documentation. The screenshot from *Similarweb* indicates "total visits" of 80.9 million; however, the Petitioner has not explained how this statistic supports a determination that [redacted] qualifies as "major media" by having a high circulation or distribution relative to other online publications. Evidence of published material in major media publications about the Petitioner should establish that the circulation (online or in print)

[1] As there are no assurances about the reliability of the content from this open, user-edited Internet site, information from *Wikipedia* will be accorded no evidentiary weight. *See Lamilem Badasa v. Michael Mukasey*, 540 F.3d 909 (8th Cir. 2008).

or viewership is high compared to other statistics and identify the intended audience.[2] Here, the record does not contextualize those statistics, indicate their significance, or elaborate on how that information could establish that the website is the type of major media contemplated by 8 C.F.R. § 204.5(h)(3)(iii). Moreover, given the minimal information regarding the intended audience of [redacted] it cannot be deemed a professional or trade publication.

The Petitioner also submitted numerous articles regarding e-commerce trends generally; however, as noted by the Director, the articles are not specifically about the Petitioner and his work in the field.[3] On appeal, the Petitioner cites to *Muni v. INS*, 891 F. Supp. 440 (N.D. Ill. 1995), arguing that he need only establish that there is published material about him and is not required to show that the entire focus of the articles be on him and his work. The cited decision addresses the specific issue of whether published materials about a petitioner must demonstrate that they are "one of the best" the field, at the ""top of the field," or a "star" in the field. There is nothing in *Muni* to suggest that any article that mentions a person's name and their field of work should automatically be deemed to be "about" that person. While the Petitioner's name is mentioned in numerous articles, such as those published in [redacted], and he is quoted in portions of the articles that mention e-commerce trends, the articles are not about him. The plain language of this criterion requires published material to contain a title, date, and an author; to be about the Petitioner and his work in the field; and to be printed in professional or major trade publications or other major media. USCIS does not consider articles which mention the Petitioner's name in passing to be about him and his work in the field.

After review of the totality of the evidence submitted in support of this criterion, we conclude that the Petitioner has not established that he meets this criterion.

> *Evidence that the individual 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).

For the purposes of this criterion, a leading role should be apparent by its position in the overall organizational hierarchy and through the role's matching duties. A critical role should be apparent from the Petitioner's impact on the organization or the establishment's activities. The Petitioner's performance in this role should establish whether the role was critical for the organization or establishment as a whole.

The Petitioner initially asserted that he is known as a professional of the highest level in the e-commerce sphere, and claimed to have performed in a critical role for [redacted] and [redacted] entities the Petitioner claims are online marketplace retailers in Russia. The Petitioner submitted letters of recommendation and press articles to demonstrate that he meets this criterion.

The Director reviewed the recommendation letters provided, but determined that the evidence did not establish the Petitioner's critical role for the entities named, nor did the record reflect that the organizations had a distinguished reputation. Accordingly, the Director issued an RFE requesting

[2] *See generally* 6 *USCIS Policy Manual* F.2 (Appendices), https://www.uscis.gov/policymanual (discussing circulation or viewership).

[3] While we only discuss a sampling of the published material here, we have reviewed the record in its entirety.

additional evidence. In response, the Petitioner submitted additional documentation and recommendation letters to demonstrate that he satisfied the requirements of this criterion. The Petitioner also asserted for the first time that that he performed in a critical role for a third online marketplace retailer, [redacted].

In denying the petition, the Director determined that aside from confirming that the Petitioner had a business relationship with these organizations, whether he performed in a leading or critical role could not be determined based on the recommendation letters and other documentation provided. On appeal, the Petitioner lists the evidence he previously submitted initially and in response to the RFE, and states that he provided the "maximum" amount of evidence he could provide. The Petitioner also states:

> My critical role in the development of [redacted] marketplace in 2021 is obvious not only thanks to the letter of thanks from [redacted] but also thanks to the figures that show revenue growth in the 4th quarter of 2021, immediately after the conclusion of the technical partnership agreement. I believe that the USCIS officer did not study the evidence carefully enough on this criterion.

Here, the Director performed a detailed review of the testimonial evidence submitted in evaluating whether the Petitioner meets this criterion, but determined that the evidence did not offer detailed and probative information that specifically addressed how the Petitioner's role for these entities was leading or critical. The Petitioner does not contest this determination on appeal but rather claims that sufficient evidence was submitted, despite the Director's identification of evidentiary deficiencies. Despite the testimonial letters praising the Petitioner's business relationship with these entities, the evidence is insufficient to demonstrate the Petitioner's impact on these organizations. Moreover, the Petitioner does not articulate how the online marketplaces for whom he claimed to perform in a critical role qualify as organizations or establishments that have distinguished reputations consistent with this regulatory criterion.

Since the Petitioner does not specifically articulate on appeal why the Director's conclusions with respect to this criterion was incorrect, we will adopt and affirm the Director's conclusions. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting that the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted the issue"); *Chen v. INS*, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight circuit courts in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case).

For the reasons discussed, the Petitioner has not established that he meets the criterion at 8 C.F.R. § 204.5(h)(3)(viii).

B. Intent to Continue to Work in the Area of Extraordinary Ability

The Petitioner has not established that he meets the requirements of at least three of the ten initial evidentiary criteria. Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's arguments regarding his intent to continue working

in his claimed area of expertise.[4] *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 documents that meet at least three of the ten 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 finding 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. USCIS 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). Here, 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 he is one of the small percentage at 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).

For the reasons discussed above, the Petitioner has not demonstrated his eligibility as an individual of extraordinary ability.

ORDER: The appeal is dismissed.

[4] Section 203(b)(1)(A)(ii) of the Act requires "the [noncitizen] to enter the United States to continue work in the area of extraordinary ability." In addition, the regulation at 8 C.F.R. § 204.5(h)(5) states that "the petition must be accompanied by clear evidence that the [noncitizen] is coming to the United States to continue work in the area of expertise." *See also* 6 *USCIS Policy Manual, supra,* at F.2(A)(2) (providing that to qualify as a person of extraordinary ability, the beneficiary must intend to continue work in the area of his or her expertise).