U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34291254

Date: NOV. 21, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, a web developer and digital designer, 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.[1]

The Director of the Nebraska 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 under 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

[1] On the Form I-140 petition, the Petitioner specified that he seeks classification as an individual of extraordinary ability. The Petitioner's initial submission includes some references to a separate immigrant classification, for individuals of exceptional ability and members of the professions holding an advanced degree, under section 203(b)(2) of the Act, with a national interest waiver of the job offer requirement under section 203(b)(2)(B)(i) of the Act. But since that time, the Petitioner has addressed various evidentiary criteria relating to extraordinary ability and has not further pursued the other classification mentioned in the initial filing. The Director adjudicated the petition under the requirements for extraordinary ability, as the Petitioner had specified on Form I-140.

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 earned a bachelor's degree in informatics and information technologies in 2017 in his native Uzbekistan. That same year, he began working in the marketing department of a Japanese information technology company as a web developer. The Petitioner has been in the United States since October 2022, when he entered as a B-2 nonimmigrant visitor.

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 claims to have satisfied three of these criteria, summarized below:

- (ii), Membership in associations that require outstanding achievements;
- (viii), Leading or critical role for distinguished organizations or establishments; and
- (ix), High remuneration for services.

The Director concluded that the Petitioner had not satisfied the requirements of any of the three claimed criteria.

We agree with the Director that the Petitioner has not met the initial evidentiary threshold.

One of the claimed criteria, at 8 C.F.R. § 204.5(h)(3)(ii), requires documentation of the individual's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.

The Petitioner stated that he satisfies this criterion as "a member of the International Association of Engineers (IAENG)."

In the denial notice, the Director determined that the Petitioner did not submit documentation of this claimed membership, and did not submit evidence of IAENG's membership requirements.

On appeal, the Petitioner states that the Director's conclusion "lacks an understanding of the provided evidence." The Petitioner does not identify that evidence or explain how it addressed the regulatory requirements of the criterion.

The regulation requires documentation of membership. We agree with the Director that the record does not contain any documentary evidence identifying the Petitioner as a member of IAENG. The Petitioner, therefore, has not satisfied the criterion's regulatory requirements.

IAENG has three levels of membership, the highest of which, "Fellow Member," "is conferred on engineers and scientists of distinction and outstanding qualification, and who has made extraordinary contributions in the engineering field." The rank of fellow member may conform to the regulatory requirements, but the Petitioner did not specifically claim to be a fellow member of the IAENG, and did not submit any evidence to document such a membership.

On appeal, the Petitioner asserts: "The IAENG's membership eligibility is determined by a panel of recognized experts in the field of engineering and computer science. These experts evaluate prospective members based on their professional achievements and contributions to the field, ensuring that only individuals with outstanding credentials are admitted." The Petitioner does not cite to any evidence to show that any such panel granted him IAENG membership.

When the Petitioner first claimed membership in IAENG, he stated: "IAENG boasts a diverse membership, including research center heads, faculty deans, department heads, professors, research scientists/engineers, experienced software development directors and engineers, and university postgraduate and undergraduate students." The Petitioner did not explain how an association that admits undergraduate students restricts membership to individuals with outstanding achievements.

For the above reasons, the Petitioner has not established, through documentary evidence, that he is a member of an association that requires outstanding achievements of its members, as judged by recognized national or international experts in their disciplines or fields.

The Petitioner has claimed to satisfy three of the eligibility criteria under 8 C.F.R. § 204.5(h)(3). Because he has not satisfied the requirements of the claimed criterion relating to memberships in associations, he cannot satisfy the minimum of three criteria. Detailed discussion of the remaining two claimed criteria, relating to leading or critical roles and remuneration, 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.

[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).

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. U.S. Citizenship and Immigration Services 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 a degree of recognition of his work that rises to the level of sustained national or international acclaim and 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).

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

ORDER: The appeal is dismissed.