U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 35432503

Date: NOV. 22, 2024

Motion on Administrative Appeals Office Decision

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

The Petitioner, an engineering executive, 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 Petitioner had not satisfied the initial evidentiary criteria, of which he must meet at least three. We dismissed the Petitioner's appeal, and the matter is now before us on a service motion to reopen pursuant to 8 C.F.R. § 103.5(a)(5).[1]

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). Upon 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
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> (iii) the [noncitizen's] entry into the United States will substantially benefit prospectively the United States.

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[1] Following the issuance of our decision, we issued a service motion reopening the application pursuant to 8 C.F.R. § 103.5(a)(5)(ii) and requesting additional evidence in support of the Petitioner's eligibility.

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 the 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. PROCEDURAL HISTORY

The Petitioner claims to be an expert in drilling engineering, with specific emphasis on well completion for oil and gas exploration and production. He intends to continue his work in this field in the United States. Because the Petitioner has not claimed or established that he has received a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at C.F.R. § 204.5(h)(3)(i)-(x).

The Director denied the petition, concluding that the Petitioner had not satisfied the initial evidentiary criteria, of which he must meet at least three. In dismissing the Petitioner's appeal, we affirmed the Director's determination that the Petitioner had not established that he meets the requirements of at least three criteria.

In September 2024, we reopened the matter on a service motion and allowed the Petitioner to supplement the record with assertions or evidence in support of his claimed eligibility. The Petitioner submitted a brief and additional evidence in response to our service motion.

III. ANALYSIS

In our previous decision, incorporated herein, we agreed with the Director's determination that the Petitioner met the plain language requirements of two evidentiary criteria relating to leading or critical role at 8 C.F.R. § 204.5(h)(3)(viii) and high salary at 8 C.F.R. § 204.5(h)(3)(ix). We further agreed with the Director's determination that the Petitioner had not met the evidentiary criteria at 8 C.F.R. § 204.5(h)(3) related to memberships (ii), published materials (iii), judging (iv), and original

contributions (v). We further declined to consider the Petitioner's initial assertion that he also met the authorship criterion at 8 C.F.R. § 204.5(h)(3)(vi), as he did not raise this issue on appeal.[2]

Upon review of the Petitioner's submissions in response to our service motion, the evidence demonstrates his service as a judge of the work of others in the same or allied field of specialization at 8 C.F.R. § 204.5(h)(3)(iv). As the Petitioner therefore meets the requirements of at least three criteria and has satisfied the initial evidence requirements, we will consider all the evidence of record when conducting the final merits determination.

Below, we will evaluate whether the Petitioner has demonstrated, by a preponderance of the evidence, his sustained national or international acclaim and that he is one of the small percentage at the very top of the field of endeavor, and that his achievements have been recognized in the field through extensive documentation. In a final merits determination, we analyze a petitioner's accomplishments and weigh the totality of the evidence to determine if their successes are sufficient to demonstrate that they have extraordinary ability in the field of endeavor.[3] In this matter, we determine that the Petitioner has not shown his eligibility.

The Petitioner, an executive in the energy industry, holds a bachelor's degree in mechanical engineering from the [redacted] as well as a master's degree in financial management from [redacted] [redacted] He began his career in India in 1981 working in drilling operations where he coordinated drilling rigs on offshore projects, and oversaw one of the first horizontal drilling projects in India in 1987. Over the years, he held numerous engineering and managerial positions for companies within the energy field. At the time of filing, he was employed as the executive vice president of completions for [redacted] a Texas company focused on manufacturing specialized oil and gas components such as eliminators, igniters, power charges, and setting tools.

During his career, the Petitioner served in a leading or critical role for various organizations, judged others in the field, and commanded a high salary for his work. He also served as a board member for a drilling engineers association, had his work acknowledged in technical publications, and made notable contributions to his field. The record, however, does not demonstrate that his personal and professional achievements rise to a level of 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.

The record indicates that the Petitioner has held high-ranking positions in the energy industry for various [redacted] companies in addition to his current position as executive vice president of completions for [redacted] While the Petitioner established that he has held leading

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[2] 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)). The Petitioner also clarified that his claim to meet this criterion had been submitted in error.

[3] Meeting the initial criteria, however, does not establish a presumption of eligibility. The purpose of the final merits determination is to evaluate the quality of the evidence submitted to meet the criteria and to determine whether the record, as a whole, supports approval of the petition. *See generally* 6 *USCIS Policy Manual* F.2(B)(2), https://www.uscis.gov/policy-manual.

roles in organizations with a distinguished reputation, the record does not demonstrate how this has led to sustained national or international acclaim or placed him at the very top of his field.

The record contains letters from numerous [redacted] executives commending the Petitioner's work and accomplishments for the company.[4] For example, a letter from [redacted] CEO of [redacted] congratulated the Petitioner on his progress on safety in the company's Canada business unit and expressed his satisfaction with the progress made in drilling performance. [redacted] president of [redacted], acknowledged in an email message the Petitioner's achievement of one year without recordable safety incidents in 2016 as a result of policy changes he implemented. [redacted] vice president of health, safety and environment, similarly acknowledged the Petitioner's achievement of one year of incident-free drilling operations at various locations due to his safety and performance improvements. Generally, the letters attest to the Petitioner's internal leadership in shaping accountabilities in health and safety, which is deemed crucial to the company's operations. While this demonstrates that the Petitioner held leading and critical roles within the [redacted] organization, the record does not establish that the Petitioner's role in ensuring these health and safety procedures is commensurate with sustained national or international acclaim and that he is one of that small percentage who have risen to the very top of the field. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2)-(3).

With respect to the Petitioner's original contributions in the field, he submitted testimonial letters from former colleagues at [redacted] as well as opinion letters in support of his assertion that he is an expert in the industry. A letter from [redacted] a general manager of strategy and training at [redacted] noted that the Petitioner "was able to reduce safety incidents to zero during his tenure" by implementing novel accountability measures, "improved drilling efficiency in Venezuela and Argentina" and "implemented programs to improve organizational capabilities and to prepare the workforce to take on challenging technical and management assignments across the world." [redacted] who served as the Petitioner's supervisor when he worked for the company in Canada, again affirmed the Petitioner's history of success in minimizing safety incidents, noting that during his first year running drilling and completions, the Petitioner "reduced the number of [safety] incidents from 13 to zero" through changes he implemented in agreements with service providers.

[redacted] stated that as a team leader for rock mechanics, the Petitioner's leadership on the team's projects "helped to reduce risks related to uncertainties in subsurface rock mechanics, ultimately reducing the company's capital expenditure on drilling and completions" and also discussed process improvements and drilling efficiencies implemented by the Petitioner, stating that he was involved in the development of [redacted] "unique assurance program for well control." [redacted] vice president and global account director for [redacted] also recounted the Petitioner's process improvements and drilling efficiencies, claiming that the Petitioner's "overarching accomplishment has been to deliver large drilling projects around the world effectively, timely, under budget, and perhaps most importantly, safely," and that his "innovative approach was unique in my experience, and rarely is this level of collaboration found in the oilfield." Similarly, [redacted] a retired general manager for a [redacted] business venture in Argentina, recounted working with the Petitioner over the course of his career and reiterated the Petitioner's accomplishments in drilling efficiencies as well as cost and safety improvements. [redacted] president and CEO of [redacted]

[4] While we discuss a sampling of letters, we have reviewed and considered each one.

[redacted] stated that the Petitioner's drilling initiatives "saved [redacted] over $1 million USD per well in completion costs" and that the Petitioner "has shown initiative to create a safer and more compliant workspace for his colleagues and his professionalism is at the highest level I have seen."

While these letters from the Petitioner's former colleagues at [redacted] highlight the importance and value of the Petitioner's contributions to safety and drilling protocols and efficiencies, and attest to the novelty and utility of the Petitioner's contributions and innovations, they do not establish that his contributions have been recognized at a level that elevates him to the top of his field or that they have resulted in his sustained national or international acclaim. It is generally expected that one whose accomplishments have garnered sustained national or international acclaim would have received recognition for their accomplishments well beyond the circle of their personal and professional acquaintances. *See generally* 6 *USCIS Policy Manual* F.2(B)(3), https://www.uscis.gov/policy-manual. Although the letters from the Petitioner's former colleagues reflect the novelty of his work, they do not sufficiently articulate how his safety and drilling efficiencies have been considered of such importance and how their impact on the field rises to the level of major significance required by this criterion.

The Petitioner also submitted an opinion letter from [redacted] general counsel for [redacted] who summarized the above declarations of the Petitioner's [redacted] colleagues and concluded that, based on his "over 30 years of legal and merger acquisition expertise in the energy industry," the Petitioner has made "business contributions of major significance in the field." Again, while we acknowledge the Petitioner's innovations in safety and drilling efficiencies, the record does not show how the Petitioner's work has been widely implemented or has otherwise impacted the field of oil and gas or fields directly related to advancements in drilling engineering methodologies, and therefore falls short of demonstrating that his achievements have been recognized in the field or that his level of expertise places him among the small percentage at the very top of his field. While the letters from his [redacted] colleagues commend the Petitioner's skills and knowledge, they do not state the specific ways in which his work has received national or international recognition. The Petitioner has not demonstrated how his work for his employers sets him apart from others or how his roles reflected or resulted in his sustained national or international acclaim in the field. The Petitioner has not demonstrated that his contributions are of major significance to the field or that such contributions resulted in the Petitioner "having achieved sustained acclaim as one of the very top of the field of endeavor."

The record also contains a letter from [redacted] President and COO of [redacted] [redacted] Mr. [redacted] who stated that he worked closely with the Petitioner through his company's contract association with [redacted] praised his "novel technical limits concept approach to rig contracts." He further claimed that this approach facilitated a collaborative platform between oil and gas companies and drilling contractors, thus resulting in a "win-win" situation for both companies that resulted in efficiencies and cost savings. However, Mr. [redacted] did not sufficiently detail in what ways the Petitioner's innovations have earned him national or international acclaim. While he generally claims that the Petitioner's technical limits concept helped provide cost-driven solutions to oil and gas companies, the record does not show that these innovations have earned him national or international acclaim in his field or show that he is at the top of his field.

In response to our service motion, the Petitioner asserts that the Petitioner's contributions to the field have "mitigated the risk of major compromise and accidents in oil and gas exploration and production activities," and claims that the submitted letters from industry experts have meticulously described his contributions and were erroneously disregarded. The Petitioner also submits additional evidence to further support this assertion, including an opinion letter from [ ] an economist, as well as numerous articles and publications discussing the importance of safety measures and protocols in the oil and gas industry.

Mr. [ ] provides an "economic impact analysis" of the Petitioner, and states that he has performed a "qualitative evaluation of [the Petitioner's] economic contributions to the United States using generally accepted econometric methodologies." According to Mr. [ ] a review of the Petitioner's taxable income using the INPLAN, an econometric software program, reveals that 64 non-direct jobs were created in the United States based on his remuneration, and additionally generated $1.7 million in federal taxes. Mr. [ ] concludes that these jobs constitute significant contributions to the national economy based on their productivity, and further stimulate substantial amounts of taxes. Although the Petitioner's remuneration may have indirectly contributed to the creation of jobs and the generation of taxes, Mr. [ ] analysis does not sufficiently support a finding that the Petitioner's "economic impact" rises to the level of national or international acclaim or that he has risen to the very top of his field as a result of this claimed impact.

In response to the service motion, the Petitioner also submits articles and reports regarding the importance of safety measures in the industry and emphasizes that the oil and gas industry "is known for its high risks and volatility" and that "safety is the actual prerequisite to the stability and prosperity of the oil and gas industry." The Petitioner asserts that the safety measures he implemented demonstrate his quantifiable economic impact and the positive economic effects that have resulted from his innovations. While we acknowledge the importance of safety protocols in the oil and gas industry and the Petitioner's contributions to such protocols over the course of his career, the Petitioner has not demonstrated that his contributions were reflective of, or resulted in, widespread acclaim from his field or that he is considered to be at the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2). The Petitioner did not establish that he garnered acclaim or extensive recognition from the field based on his contributions to safety protocols in the oil and gas industry, representing sustained national or international acclaim or a "career of acclaimed work in the field." *See* section 203(b)(1)(A) of the Act and H.R. Rep. No. 101-723 at 59.

The Petitioner submitted technical publications and asserted that they contained "advancements and findings made by [his] team of top-level researchers and scientists." The Petitioner also submitted copies of papers which he asserted were written by his team members and presented at conferences. While we acknowledge the Petitioner's assertions that the technical publications and papers contain information about advances in his field as put forth by his team, the submitted documentation does not discuss the merits of the Petitioner's work, his standing in the field, any significant impact that his work has had on the field, or any other information to show that these advancements and findings received significant attention such that they are commensurate with those among the top of his field.

The Petitioner also highlights his position as a board member for the American Association of Drilling Engineers (AADE) and the fact that he served on the steering committee of the association's Emerging Technology Group from September 2006 to December 2008. The Petitioner claims that membership in

AADE and its steering committees is comprised of "professional members . . . who represent the top of their professions." Although the record reflects that the Petitioner's board position and membership on the AADE's steering committee is notable in that it is "based on merit and industry experience," the record does not demonstrate that board positions or steering committee membership is reserved only for those AADE members who have achieved acclaim at the national or international level or is otherwise indicative of their standing at the very top of the field.

As it pertains to the Petitioner's service as a judge of the work of others, an evaluation of the significance of his experience is appropriate to determine if such evidence indicates the required extraordinary ability for this highly restrictive classification. *See Kazarian*, 596 F.3d at 1121-22. The Petitioner presented evidence showing that as a member of Global Drilling and Completions Leadership Team and Personal Development Committee, "he reviewed the work of the entire Drilling and Completions workforce around the world (totaling thousands of members)." The Petitioner further asserted that he conducted performance reviews of the teams in the regions where he served as a manager, conducted annual performance appraisals, hired new employees, and selected individuals for promotion.

Additionally, the Petitioner presented evidence that he oversaw and judged the work of his subordinates on the 19-member Rock Mechanics Team, nominated a subordinate as a Fellow, and indicated that as executive vice president of completions for he is currently "responsible for judging the work of others on a regular basis, as he constantly reviews the work of other engineers to promote a safer and more streamlined environment for the company and its customers."

The Petitioner did not establish that the nature of these evaluations contribute to a finding that he has a career of acclaimed work in the field or are indicative of the required sustained national or international acclaim. *See* H.R. Rep. No. 101-723 at 59 and section 203(b)(1)(A) of the Act. He did not show, for example, how his experience in evaluating subordinate engineers compares to others at the very top of the field. Similarly, the record does not show that the Petitioner has received any international recognition for conducting these evaluations. Without this or other evidence differentiating him from others in his field, such as evidence that he has a consistent history of reviewing or judging recognized, acclaimed engineers or experts in his field, the Petitioner has not shown that his judging experience places him among that small percentage who has risen to the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2) and 56 Fed. Reg. at 30704.

Finally, although the record reflects the Petitioner's earned income in various positions between 2013 to 2022, the record does not establish that he commanded earnings commensurate with sustained national or international acclaim. *See* section 203(b)(1)(A) of the Act. The Petitioner did not show that his wages are tantamount to an individual who is among that small percentage at the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2). For example, the Petitioner did not demonstrate how his salary compared to others at the very top of his field, or that he received notoriety or attention based on his earnings separating himself from others in the field or placing him in the upper echelon. The Petitioner has not provided information that establishes his earnings are reflective "of that small percentage who have risen to the very top of the field of endeavor."

In summary, 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 (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, although the Petitioner has shown that he intends to continue working in his area of expertise and his entry will substantially benefit prospectively the United States, he 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 at 59; *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).

IV. O-1 NONIMMIGRANT STATUS

The record reflects the Petitioner received O-1 status, a classification reserved for nonimmigrants of extraordinary ability. Although USCIS has approved at least one O-1 nonimmigrant visa petition filed on behalf of the Petitioner, the prior approval does not preclude USCIS from denying an immigrant visa petition which is adjudicated based on a different standard - statute, regulations, and case law. Many Form I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. *See, e.g.*, *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41(2d. Cir. 1990). Furthermore, our authority over the USCIS service centers, the office adjudicating the nonimmigrant visa petition, is comparable to the relationship between a court of appeals and a district court. Even if a service center director has approved a nonimmigrant petition on behalf of an individual, we are not bound to follow that finding in the adjudication of another immigration petition. *See La. Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, at *2 (E.D. La. 2000).

V. CONCLUSION

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

ORDER: The appeal is dismissed.