U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 35367285

Date: FEB. 3, 2025

Appeal of Nebraska Service Center Decision

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

The Petitioner, a software developer and entrepreneur, seeks classification as an alien 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 although the record established that the Petitioner satisfied the initial evidentiary requirements, it did not establish, as required, that the Petitioner has sustained national or international acclaim and is in the small percentage at the very top of the field. The Director also concluded that the Petitioner had not established that his entry would substantially prospectively benefit the United States. 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 aliens 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 aliens 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 aliens 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 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 alien'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 alien 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).

A petitioner must also establish that the alien's entry into the United States will substantially benefit prospectively the United States. Section 203(b)(1)(A)(iii) of the Act.

II. ANALYSIS

The Petitioner seeks employment as the chief executive officer (CEO) of [redacted] which does business under the name [redacted] The Petitioner earned a bachelor of engineering degree in 2005. The Petitioner stated that he "has worked in leading technology firms in the area of [SAP] enterprise level technology and data modeling. . . . [W]hat stands out most [in his career] is his most recent use of this technology in the building of an ERP software platform for the cannabis industry." Since 2008, the Petitioner has worked intermittently in the United States in H-1B nonimmigrant status for different employers, most recently for [redacted][1]

A. Final Merits Determination

The Petitioner initially claimed to have satisfied seven of the initial criteria at 8 C.F.R. § 204.5(h)(3), summarized below:

- (i), Lesser nationally or internationally recognized prizes or awards;
- (iii), Published material about the alien in professional or major media;
- (iv), Participation as a judge of the work of others;
- (v), Original contributions of major significance;
- (vi), Authorship of scholarly articles;
- (viii), Leading or critical role for distinguished organizations or establishments; and
- (ix), High remuneration for services.

The Director determined that the Petitioner had satisfied three of the criteria, pertaining to participation as a judge, authorship of scholarly articles, and a leading or critical role.

[1] The Petitioner is also the beneficiary of two previously approved immigrant petitions, both filed by his then-current U.S. employers, seeking to classify him as a member of the professions holding an advanced degree. The first petition was filed and approved in July 2014; the second was filed in August 2017 and approved in June 2018.

Because the Petitioner submitted the required initial evidence, we evaluate whether he 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. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20.[2] In this matter, we agree with the Director's determination that the Petitioner has not established eligibility.

The record shows that the Petitioner has written two textbooks about the use of SAP enterprise software. The books' publisher asserted that the Petitioner is among the publisher's bestselling authors, and that the Petitioner's books have sold about 5,900 copies. The Petitioner did not provide comparative data to show how the sales figures rank not only within one independent publishing company, but within the broader field as a whole.

The Petitioner's initial submission included a letter from [redacted] offering the Petitioner the position of CEO at a salary of $200,000 per year, effective January 2022. The letter identifies the Petitioner's spouse as the president of [redacted] The Petitioner's résumé indicates that he had worked for [redacted] since 2019, but does not specify his title before 2022. At [redacted] the Petitioner developed a software platform focused on the cannabis industry.

In the final merits determination, the Director acknowledged the Petitioner's "development of an SAP software program" and his establishment of [redacted] The Director concluded that, although "the petitioner has developed a computer platform which has generated business interest and . . . he has made contributions of merit," "the record does not differentiate the petitioner amongst other similarly advancing SAP computer platform developers/leaders to show that he has garnered a career of acclaimed work of such preeminence and distinction as to elevate him to that small percentage at the very top of the field of endeavor."

The Director concluded that the Petitioner had not submitted "probative documentary evidence" to support the claim that "his SAP software programs are being utilized by other members of the farming industry." The Director acknowledged [redacted] status as a vendor of another company's integration software, but the Director concluded that the Petitioner had not shown that this status as a vendor demonstrates sustained national or international acclaim or otherwise establishes extraordinary ability.

On appeal, the Petitioner asserts that he has submitted sufficient evidence to show that his "work on the SAP/ERP platform has earned him sustained national acclaim within the U.S. and International agricultural sector." The Petitioner contends that the Director disregarded persuasive evidence and "focus[ed] too narrowly on comparisons" with others in his field.

[2] *See generally* 6 *USCIS Policy Manual* F.2(B)(2), https://www.uscis.gov/policy-manual (stating that USCIS officers should then evaluate the evidence together when considering the petition in its entirety to determine if the petitioner has established, by a preponderance of the evidence, the required high level of expertise for the immigrant classification).

It is the petitioner's responsibility on appeal to specifically identify erroneous conclusions of law and statements of fact. *See* 8 C.F.R. § 103.3(a)(1)(v). The relevant portion of the Petitioner's appellate brief contains few such details, which we will address below.

The most specific detail in the appellate brief relates to documents in the record indicating that The [redacted], had offered to acquire [redacted] while retaining the Petitioner's services as chief technology officer at a salary of $200,000 per year.

The Director took these materials into account in the denial notice, stating: "In 2021 the petitioner sold [redacted] to [redacted] for $1 million dollars [sic] and installed the petitioner as the Chief Technology Officer."

The Petitioner had initially claimed that the proposed acquisition of [redacted] qualifies as a nationally or internationally recognized prize or award as described at 8 C.F.R. § 204.5(h)(3)(i). We will not discuss this aspect of the claim, except where necessary for context, because the issue before us on appeal concerns the final merits determination rather than the underlying evidentiary criteria. But we will consider the information about the proposed acquisition to the extent that it could reflect the Petitioner's national or international acclaim.

The record does not indicate that the acquisition actually occurred. The Petitioner and his spouse, identified respectively as president and owner of [redacted] signed a March 2021 letter of intent regarding the proposed acquisition. The letter indicates that the arrangement "will automatically terminate . . . on August 1, 2021" unless the parties execute the agreement before that date.

The asset purchase agreement in the record would have transferred [redacted] assets to [redacted] in exchange for a 4% interest in [redacted] and a deferred payment of up to $1 million, to be paid in four annual installments once [redacted] annual income exceeds the proposed payment amount. An email message from the CEO of [redacted] clarified that [redacted] would become eligible for these payments "once profitable" (emphasis in original). But the submitted copy of the acquisition agreement is unsigned. The Petitioner did not submit evidence of the transfer of shares or payments from [redacted] to [redacted], and on appeal, the Petitioner refers to "the potential sale" and does not state that the sale took place.

In a request for evidence (RFE), the Director stated: "USCIS has considered the merger payout amount and the self-petitioner's [offered] compensation, but notes that no evidence has been provided to show that these amounts are greater than comparable mergers or acquisitions in the computer field for similar intellectual property."

In response, the Petitioner asserted: "There is nothing in the regulations or case law which show that such an award has to be compared with other such awards." The Petitioner's argument was focused on the requirements of the "award" criterion at 8 C.F.R. § 204.5(h)(3)(i).

The Petitioner did not address the separate issue of how the terms of the proposed acquisition might relate to the extent of the Petitioner's acclaim and recognition. The Petitioner's RFE response statement devoted three paragraphs to "Part Two of the Two-Part [*Kazarian*] Analysis." This section of the RFE response did not discuss or address the proposed acquisition.

In the denial notice, the Director repeated the passage from the RFE indicating that the Petitioner had not established that the proposed acquisition terms demonstrate sustained national or international acclaim.

On appeal, the Petitioner states that the Director "fail[ed] to acknowledge the significance of [the Petitioner's] role as Chief Technology Officer and the business success associated with the potential sale of [redacted] to [redacted]

But, as explained above, the Petitioner did not establish the significance of the proposed acquisition when specifically asked to do so in the RFE. A comparison with other business transactions may, as the Petitioner asserted, be irrelevant within the context of the "awards" criterion, but in a final merits determination, the Petitioner must establish that the record as a whole establishes sustained national or international acclaim and places him at the very top of the field.

The Petitioner did not establish that, or explain how, an offer of a 4% ownership interest and a contingent payment of $1 million is characteristic of the required acclaim and recognition. In terms of "the business success associated with the potential sale," the wording of the agreement and related documents indicate that [redacted] was not yet "profitable" at the time of the offer in 2021. The Petitioner has neither established that the acquisition took place nor explained why it did not occur. The Petitioner has not demonstrated that an expression of interest in purchasing the company at the terms stated, itself, demonstrates acclaim.

Also on appeal, the Petitioner asserts that he had submitted "multiple letters from industry leaders, including those who are well-placed to comment on the broad significance of his contributions." The Director acknowledged these letters in the RFE and in the denial notice, concluding that they establish "business interest" in the Petitioner's software platform but do not establish that he is an acclaimed figure at the top of his field.

The Petitioner's general assertion on appeal that he submitted "multiple letters from industry leaders" to show "the broad significance of his contributions" lacks specificity. The Petitioner has stated that he disagrees with the Director's conclusions but does not point to specific details that show those conclusions to be in error. Furthermore, the assertion that the letters are "from industry leaders" is, itself, a claim requiring evidentiary support rather than an uncontested fact. Statements in a brief, motion, or Notice of Appeal are not evidence and thus are not entitled to any evidentiary weight. *Matter of S-M-*, 22 I&N Dec. 49, 51 (BIA 1998).

The Petitioner submits two further letters on appeal, both from customers who state that the [redacted] software platform has helped them to make their businesses more efficient and productive. The Petitioner also submits a contract and related documentation for another customer. These documents are not material to the appeal. The issue on appeal is not whether the Petitioner has developed useful software, but whether, in doing so, he has achieved sustained national or international acclaim that places him at the very top of his field. The letters on appeal do not show that the Petitioner has achieved national or international acclaim.

The Petitioner contends that "the denial . . . focused on the perceived lack of singularly extraordinary achievements rather than considering the cumulative impact of [the Petitioner's] career." As above, this is a broad and general statement.

In all cases, the petitioner must provide sufficient context to establish the person's extraordinary ability in the totality of the circumstances. This means that the petitioner must explain the significance of the submitted evidence, and how it demonstrates that the person has achieved sustained national or international acclaim and recognition in their field of expertise. *See generally* 6 *USCIS Policy Manual* F.2(B)(2), https://www.uscis.gov/policy-manual. Without more specific information, it cannot suffice for the Petitioner to assert, on appeal, that the Director did not consider "the cumulative impact of [the Petitioner's] career." The Petitioner must explain both what that impact has been, and how the record shows it. Here, the Petitioner has not done so.

The Petitioner asserts that the "major significance . . . [of] his pioneering work with SAP/ERP software for the agricultural industry [is] evidenced by multiple citations, business achievements, and industry adoption in nine U.S. states." These assertions relate to the Petitioner's prior claim to have satisfied the requirements of 8 C.F.R. § 204.5(h)(3)(v), relating to original contributions of major significance in the field. The Director concluded that the Petitioner had not satisfied that criterion's requirements, and the satisfaction of a fourth initial evidentiary criterion would not establish acclaim in the final merits determination.

In the context of the "original contributions" criterion, the Director addressed the citations, letters, and the proposed acquisition by [redacted] devoting several paragraphs of the decision to explaining to conclusion that the evidence does not suffice to meet the regulatory requirements. The general assertion that the Director should have come to a different conclusion does not establish that the Director erred.

In the context of the final merits determination, the Director stated that the Petitioner had not corroborated key assertions regarding the extent of the adoption of his software platform. For instance, the Petitioner stated that "his company has been approved by half a dozen states as an official METRC Integration vendor. This is a significant achievement that not many individuals or companies can achieve."

The Petitioner's response to the RFE included press releases from [redacted] indicating that METRC approved the company as "a Validated Integration Vendor" in several states. METRC software assists cannabis businesses with state regulatory compliance. The Petitioner did not submit objective documentation to show that [redacted] status as a vendor of this third-party software "is a significant achievement" that points toward the Petitioner's sustained national or international acclaim.

On appeal, the Petitioner asserts: "it is not required that a petitioner demonstrate acclaim equal to that of globally recognized superstars in the field." The Director did not require "global" recognition in the denial notice. Rather, the Director noted that the regulation at 8 C.F.R. § 204.5(h)(2) requires an alien to be "at the very top of the field," and, as a result, the classification is "highly restrictive."

The burden is on the Petitioner to establish that he is not only successful, but nationally or internationally acclaimed. The Petitioner, on appeal, has not shown that he has met that burden.

B. Substantial Prospective Benefit

The Director determined that the Petitioner had not established that his entry would substantially prospectively benefit the United States, because a core function of his business is to support the cannabis

industry, and cannabis remains a federally prohibited controlled substance. The Director concluded that the Petitioner had not established "that his employment would not contravene federal . . . law." The Director also made the broader determination, aside from cannabis laws, the Petitioner did not "provide either details, facts or opinions which address exactly how the petitioner's work will provide a benefit to the U.S. prospectively." The Petitioner disputes this conclusion on appeal.

We agree with the Director that the Petitioner has not established the necessary national or international acclaim in the final merits determination. This conclusion is sufficient, by itself, to determine the outcome of the appeal. Detailed discussion of the separate "prospective benefit" issue cannot change that outcome. Therefore, we reserve this issue.[3]

III. CONCLUSION

The Petitioner seeks a highly restrictive visa classification, intended for aliens already at the top of their respective fields, rather than for those progressing toward the top. Here, the Petitioner has provided information about his business endeavors, but has not provided sufficient evidence to show a degree of recognition of his work that rises to the level of sustained national or international acclaim and demonstrate 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 alien of extraordinary ability. We will therefore dismiss the appeal.

ORDER: The appeal is dismissed.

[3] *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).