U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 35427293

Date: JAN. 27, 2025

Appeal of Nebraska Service Center Decision

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

The Petitioner 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 Nebraska Service Center Director denied the Form I-140, Immigrant Petition for Alien Workers (petition), concluding the record did not establish that the Petitioner had a major, internationally recognized award, nor did he demonstrate that he met at least three of the ten regulatory criteria. 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 to U.S. Citizenship and Immigration Services (USCIS) by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (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

To qualify under this immigrant classification, the statute requires the filing party demonstrate:

- The foreign national enjoys extraordinary ability in the sciences, arts, education, business, or athletics;
- They seek to enter the country to continue working in the area of extraordinary ability; and
- The foreign national's entry into the United States will substantially benefit the country in the future.

Section 203(b)(1)(A)(i)–(iii) 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-step analysis. In the first step, a petitioner can demonstrate international recognition of his or her 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 he or she 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 move to the second step to 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, 1121 (9th Cir. 2010) (discussing a two-step 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 Amin v. Mayorkas*, 24 F.4th 383, 394 (5th Cir. 2022).

II. ANALYSIS

The Petitioner is a massage therapist. And we begin taking notice that agency systems reflect the Petitioner was removed from the United States following a removal order. But subsequent to that removal, he has not supplemented the record explaining how he intends to continue to work in the area of his claimed expertise in the United States. Section 203(b)(1)(A)(ii) of the Act, 8 C.F.R. § 204.5(h)(5). While that possible shortcoming will not serve as a primary basis for our decision on his appeal, it remains an open question the Petitioner should be prepared to address in any future proceeding relating to this or any other petition filed for this immigrant classification.

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). Before the Director, the Petitioner claimed he met four of the regulatory criteria. The Director decided that the Petitioner satisfied one of the criteria relating to judging the work of others but that he had not satisfied the criteria associated with membership, original contributions, leading or critical role, or high salary or remuneration. On appeal, the Petitioner maintains that he meets the evidentiary criteria that the Director declined to grant, to include claiming membership for the first time. After reviewing all the evidence in the record, we conclude he has not demonstrated eligibility for this restrictive immigrant classification.

1. Membership in Associations under 8 C.F.R. § 204.5(h)(3)(ii).

Before the Director, the Petitioner did not claim he was eligible under this criterion. The Director appears to have mistakenly considered the Certificate from the National Federation of Massage Therapists the Petitioner presented in the response to the request for evidence under this criterion. But the Petitioner intended that certificate to apply to his claims under the leading or critical role requirement. As the Petitioner did not claim eligibility under this criterion before the Director, he cannot assert it for the first time in this appeal. *See Matter of Furtado*, 28 I&N Dec. 794, 801–02 (BIA 2024) (declining to consider new eligibility claims or evidence on appeal when the filing party was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the denial). Even if that were not the case, much of the eligibility claims the Petitioner submits

on appeal are only assertions within the brief and he did not describe the evidence to corroborate those claims. For instance, he did not expound on the approval process for acceptance in the National Federation of Massage Therapists.

The Petitioner has not submitted evidence that meets the plain language requirements of this criterion.

2. Original Contributions of Major Significance under 8 C.F.R. § 204.5(h)(3)(v).

The primary requirements here are that the Petitioner's contributions in their field were original and they rise to the level of major significance in the field, rather than to a project or to an organization. *See Amin*, 24 F.4th at 394 (citing *Visinscaia v. Beers*, 4 F. Supp. 3d 126, 134 (D.D.C. 2013)). The regulatory phrase "major significance" is not superfluous and, thus, it has some meaning. *Nielsen v. Preap*, 586 U.S. 392, 415 (2019) (finding that every word and every provision in a statute is to be given effect and none should needlessly be given an interpretation that causes it to duplicate another provision or to have no consequence). Further, the Petitioner's contributions must have already been realized rather than being potential, future improvements. Contributions of major significance connotes that the Petitioner's work has significantly impacted the field. The Petitioner must submit evidence satisfying all of these elements to meet the plain language requirements of this criterion.

The Petitioner begins his arguments under this criterion contesting the Director's application of the *Visinscaia* decision referenced in the above paragraph. The Petitioner contends that the *Visinscaia* opinion does not reflect he is required to demonstrate an influence on the field as a whole. A review of that opinion reveals this office stated the offered evidence did not "provide specific information relating to the impact of Visinscaia's dance technique on the field as a whole." The court agreed with our method of applying the regulatory provision here and affirmed our determination under this criterion. As a result, the Petitioner's point is not persuasive.

We observe this case and *Visinscaia* bear some similarities. Both petitioners claimed that their technique within their claimed area of extraordinary ability was the basis for eligibility under this criterion. But the Petitioner—much like the foreign national in *Visinscaia*—has not demonstrated the impact of their purported special technique. In *Visinscaia* it was her weight transfer technique that she did not adequately support with corroborating evidence, and for this Petitioner it is his adaptive method blending traditional Thai massage with modern therapeutic procedures.

Within the appeal, the Petitioner identifies several attachments to the original petition, but he failed to label any of the evidence in the original petition with any identifying attachment numbering system. More importantly, in addition to not informing us of what the evidence was that the Petitioner relies on under this criterion, he also does not explain how each piece of evidence serves to support his eligibility claim. Instead, he merely lists the evidence and claims it shows his methodologies have been discussed and praised, and that others in the field utilize them. This leaves our office unable to confidently locate the referenced evidence and hinders our ability to decide whether it meets the regulatory requirements.

It is the filing party's responsibility to inform us of what errors the lower entity committed and how their claims and evidence satisfy which eligibility requirements. *Nolasco-Amaya v. Garland*, 14 F.4th at 1012–13; *Spear Mktg., Inc. v. BancorpSouth Bank*, 791 F.3d 586, 599 (5th Cir. 2015); *S.E.C. v.*

Thomas, 965 F.2d 825, 827 (10th Cir. 1992); *see also Harolds Stores, Inc. v. Dillard Dep't Stores, Inc.*, 82 F.3d 1533, 1540 n.3 (10th Cir. 1996) (concluding that where the evidence in the record is voluminous, it is imperative that an appellant provide specific references to record); *Uli v. Mukasey*, 533 F.3d 950, 957 (8th Cir. 2008) (citing to *Matter of D-I-M-*, 24 I&N Dec. 448, 451 (BIA 2008) and noting when a case includes voluminous background materials, it is necessary to specifically identify the material one relies on to come to their conclusion).

The truth is to be determined not by the quantity of evidence alone but by its quality. *Chawathe,* 25 I&N Dec. at 376 (citing *Matter of E-M-*, 20 I&N Dec. 77, 80 (Comm'r 1989)). Here, the Petitioner has not met his burden of proof that is comprised of both the initial burden of production, as well as the ultimate burden of persuasion. *Matter of Y-B-*, 21 I&N Dec. 1136, 1142 n.3 (BIA 1998).

The Petitioner has not submitted evidence that his contributions have had a sufficiently appreciable impact in the field, and as a result he has not met this criterion's requirements.

3. High Salary or Significantly High Remuneration

Here, the regulation requires: "Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field." 8 C.F.R. § 204.5(h)(3)(ix). The Petitioner provided evidence relating to his annual earnings in 2022. The Director determined that the Petitioner did not meet the requirements of this criterion. Specifically, the Director noted that the Petitioner's reliance on comparative data of average salaries was not the type of evidence that might show his salary was high in relation to others in the field. The Director further noted the supporting evidence presented earnings for professions different than the Petitioner's, and as a result, some of his evidence was not relevant.

On appeal, the Petitioner takes issue with the Director's determination claiming his earnings were significantly higher than the vast majority of professionals in his field. However, the Director explained why this statement is not adequate to meet this criterion's requirements. And the Petitioner does not address the Director's determination that he provided evidence relating to professions other than his own.

As the record currently exists, the Petitioner has not submitted evidence that meets the plain language requirements of this criterion.

4. Additional Criteria

We conclude that although the Petitioner satisfies the judging criterion, he does not meet the criteria regarding membership, original contributions of major significance, or a high salary or significantly high remuneration. While he argues and submits evidence for one additional criterion on appeal relating to performing in a leading or critical role at 8 C.F.R. § 204.5(h)(3)(viii), it is unnecessary that we make a decision on this additional ground because he cannot numerically meet the required number of criteria.

As the Petitioner cannot fulfill the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3), we reserve the remaining issue. *Patel v. Garland*, 596 U.S. 328, 332 (2022) (citing *INS*

v. Bagamasbad, 429 U.S. 24, 25–26 (1976) (finding agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision)); *see also Matter of Larios-Gutierrez De Pablo & Pablo-Larios*, 28 I&N Dec. 868, 877 n.8 (BIA 2024) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible). It is also unnecessary that we provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119–20.

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 do not need to 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 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 that goal. 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 the significance of their 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). Moreover, the record does not otherwise demonstrate that the Petitioner has garnered national or international acclaim in the field, and they are one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) 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. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.