U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37408708

Date: APR. 03, 2025

Appeal of Texas Service Center Decision

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

The Petitioner is a consultant and business analyst who 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 Texas 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 she demonstrate that she 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 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 alien 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 alien'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 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

A. Evidentiary Criteria

Because the Petitioner has not indicated or established that she has received a major, internationally recognized award, she must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x). As the Director noted, the Petitioner's initial filing did not address any of the regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x). One reason for this shortcoming may be because her correspondence accompanying the initial filing indicated she sought employment-based second preference (EB-2) immigrant classification as through a national interest waiver of the job offer requirement attached to EB-2 classifications. *See* section 203(b)(2) of the Act, 8 U.S.C. § 1153(b)(2).

Nevertheless, within the Petitioner's response to the Director's request for evidence she only claimed she was eligible under three of the regulatory criteria; the minimum required to satisfy the first of this multi-step process. Because she only claimed three criteria, this means her failure to meet any single criterion would mean that she does not qualify for this restrictive immigrant classification. On appeal, the Petitioner maintains that she meets the same three evidentiary criteria she claimed before the Director. After reviewing all the evidence in the record, we conclude she has not demonstrated eligibility.

1. "Documentation of the alien'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." 8 C.F.R. § 204.5(h)(3)(ii).

This criterion contains several evidentiary elements the Petitioner must satisfy. First, the Petitioner must demonstrate that she is a member of an association in her field. Second, the Petitioner must demonstrate both of the following: (1) the associations utilize nationally or internationally recognized experts to judge the achievements of prospective members to determine if the achievements are outstanding, and (2) the associations use this outstanding determination as a condition of eligibility for prospective membership.

The Petitioner provided credentialing certifications. The Director determined that the Petitioner did not meet the requirements of this criterion. In doing so, the Director stated:

> The petitioner has not provided evidence that she has a membership in the association. She has provided certificates showing that she has completed various levels of what appear to be SAFe certified trainings or courses. No association bylaws have been provided which specify conditions for membership. In addition, it has not been shown that the beneficiary's outstanding achievement was a condition for any membership, or that such membership was judged my national or international experts in the field.

The Petitioner failed to demonstrate she holds membership in any association, as she appears to misconstrue certifications she earned as memberships. The record is deficient of evidence that might indicate that the Petitioner's certifications are equivalent to memberships. Instead, the evidence reflects these certifications are more akin to demonstrate competency in agile methodologies.

On appeal, the Petitioner implies these are memberships in associations instead of simply certifications. And while she does provide a document that appears to reflect the organization that issued one of her certificates also offers a form of membership, she doesn't offer any evidence to establish she is a member of that entity or any other association, nor does she provide probative evidence reflecting any specific membership requirements. The Petitioner cannot attempt to shoehorn her achievements to fit within this criterion's requirements when they do not objectively satisfy them. In summary, the Petitioner has not met the plain language requirements of this criterion.

While she argues and submits evidence for two additional criteria relating to contributions at 8 C.F.R. § 204.5(h)(3)(v) and leading or critical role at 8 C.F.R. § 204.5(h)(3)(viii), it is unnecessary that we make a decision on these additional grounds because she 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 issues. *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. 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.

III. CONCLUSION

For the reasons discussed above, the Petitioner has not demonstrated her eligibility as an alien 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.