U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37346480

Date: APR. 8, 2025

Appeal of Texas Service Center Decision

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

The Petitioner, a pilot and aviation consultant, 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 it demonstrate that he met at least three of the ten regulatory criteria listed at 8 C.F.R. § 204.5(h)(3)(i) – (x). The matter is now before us on appeal. 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

To qualify as an alien with extraordinary ability, a petitioner must:

- Have "extraordinary ability in the sciences, arts, education, business, or athletics," which has been demonstrated by sustained national or international acclaim;
- Seek to continue work in their field of expertise in the United States; and
- Through their work, substantially benefit the country prospectively.

Section 203(b)(1)(A)(i)-(iii) of the Act. The term "extraordinary ability" means expertise commensurate with 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 of the evidence to determine whether a petitioner has sustained national or international acclaim and whether their

achievements have bene recognized in the field. First, a petitioner can provide evidence of either "a major, international recognized award," or satisfaction of at least three of ten lesser evidentiary criteria at 8 C.F.R. § 204.5(h)(3).[1] Then, if a petitioner meets the initial evidence requirements, USCIS must conduct a final merits determination to assess whether the record—as a whole—shows a petitioner's sustained national or international acclaim and demonstrates that the petitioner 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 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); *see generally* 6 *USCIS Policy Manual* F.2(B), www.uscis.gov/policy-manual.

II. CRITERIA

Because the Petitioner has not indicated or established 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 Director determined the Petitioner satisfied one criterion, relating to commanding a high salary or other significantly high remuneration for his services. However, for the reasons discussed below, we disagree. On appeal, the Petitioner continues to assert that he meets the evidentiary criteria relating to membership in associations, and a leading or critical role for organizations having a distinguished reputation in the field.[2]

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 field. 8 C.F.R. § 204.5(h)(3)(ii).

This criterion requires the Petitioner to establish that membership in the association requires outstanding achievements in the field for which classification is sought, as judged by recognized or international experts. Accordingly, membership in an association based solely on a level of education or experience in the field; payment of a fee or subscription; and / or employment in certain occupations, is generally not sufficient to meet this requirement.[3]

On appeal, the Petitioner asserts that he is a member of the Federal Aviation Administration (FAA), which is "validated by his possession of the prestigious Airline Transport Pilot License (ATPL)." He states that the "ATPL is the highest level of pilot certification globally." In addition, he states that the FAA regulations "are crafted by experts who inherently understand the level of expertise required to ensure aviation safety and efficiency, underscoring the FAA's role as an association comprising elite professionals in the aviation field" and proceeds to list the FAA's criteria to obtain an ATPL. The record includes a copy of his ATPL and its bylaws. However, the Petitioner has not established that his pilot certification is a membership in an association. The FAA is a government agency that regulates civil aviation in the United States. Furthermore, the evidence does not demonstrate that the certification requires outstanding achievements, as judged by recognized national or international

[1] If an evidentiary criterion does not "readily apply" to a petitioner's occupation, they may submit "comparable evidence" to establish eligibility. 8 C.F.R. § 204.5(h)(4).

[2] While we do not discuss each piece of evidence individually, we have reviewed and considered the record in its entirety.

[3] *See generally, 6 USCIS Policy Manual, supra,* at F.2(B)(1).

experts in the field, as required by the regulation at 8 C.F.R. § 204.5(h)(3)(ii). Therefore, the evidence does not overcome the Director's determination that he has not met this criterion.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. 8 C.F.R. § 204.5(h)(3)(viii).

To meet this criterion, the Petitioner must establish that he not only played a leading or critical role, but also that the organization or establishment for which he played that role is recognized as having a distinguished reputation. The plain language of the regulation requires the organization or establishment to have a distinguished reputation, defined as "marked by eminence, distinction, or excellence or befitting an eminent person."[4]

On appeal, the Petitioner contends that he performed in a critical role for the following "distinguished" companies, [redacted]. While the record includes printouts from the companies' websites, the evidence does not establish that the companies have a distinguished reputation. Without more, the evidence is insufficient to establish that the companies have a distinguished reputation as required by the regulation at 8 C.F.R. § 204.5(h)(3)(viii). Therefore, the Petitioner has not established that he meets this criterion.

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 presented an undated letter from a staffing company offering him the position of "the company's Aviation Consultant" and an Independent Contractor Agreement between the staffing company and [redacted] indicating that he will be paid a consulting fee of $175,000 per year.[5] The Petitioner also provided printouts from sites including CareerOneStop.com, Indeed.com, and Salary.com for commercial pilots in the United States. However, the Petitioner did not offer comparable salary evidence pertaining to the Petitioner's specific occupation as an "Aviation Consultant." To meet this criterion, the Petitioner must show that he has received a high salary in relation to other aviation consultants rather than commercial pilots. Both precedent and case law support this application of 8 C.F.R. § 204.5(h)(3)(ix). *See Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994) (considering a professional golfer's earnings versus other PGA Tour golfers); *see also Skokos v. US. Dept. of Homeland Sec.*, 420 F. App'x 712, 713-14 (9th Cir. 2011) (finding salary information for those performing lesser duties is not a comparison to others in the field); *Grimson v. INS*, 934 F. Supp. 965, 968 (N.D. III. 1996) (considering NHL enforcer's salary versus other NHL enforcers); *Muni v. INS*, 891 F. Supp. 440, 444-45 (N. D. III. 1995) (comparing salary of NHL defensive player to salary of other NHL defensemen). Because the Petitioner did not provide sufficient evidence demonstrating the salaries of other aviation consultants, he did not establish that

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[4] *Id.*

[5] The offer letter describes the Petitioner's position as follows:

> [A]ssist [redacted] with all matters related to the ownership, maintenance, legal compliance and piloting of [redacted] Jet Aircraft including, but not limited to, overseeing all aspects of the care and operation of said Jet Aircraft as shall be usual and normal for aircraft of this type, including compliance with all FAA Regulations relating to such operation within the United States.

he commands a high salary in relation to others in his field. Therefore, the Petitioner has not established that he meets this criterion, and we withdraw the Director's determination to the contrary.

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. We have 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 that the significance of his work as a pilot is indicative of the required sustained national or international acclaim, 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) of the Act. Moreover, the record does not otherwise demonstrate that the Petitioner has garnered national or international acclaim in the field and are one of the small percentages 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.

ORDER: The appeal is dismissed.