U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37409223

Date: APR. 09, 2025

Appeal of Texas Service Center Decision

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

The Petitioner is a financial advisor and consultant 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 even though the Petitioner demonstrated that he met at least three of the ten regulatory criteria, he did not show that the totality of the evidence demonstrated his eligibility in a final merits determination. 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 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

We adopt and affirm the Director's ultimate determination, while also making some corrections to specific criteria conclusions. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting that the practice of adopting and affirming the decision below "is not only common practice, but universally accepted").

A. Deficient Translations of Foreign Language Documents

We begin noting an evidentiary shortcoming that affects a significant amount of the Petitioner's evidence presented in a foreign language. "Petitioners and applicants for immigration benefits are required by regulation to provide certified English translations of any foreign language documents they submit." *Matter of Nevarez*, 15 I&N Dec. 550, 551 (BIA 1976) (citing 8 C.F.R. § 103.2(b), now promulgated at 8 C.F.R. § 103.2(b)(3)) which states: "Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English."

The language utilized within the regulation implicitly precludes a single certification that validates several translated forms of evidence unless the certification specifically lists the translated documents. Without a single translator's certification for each foreign language form of evidence, or a translator's certification specifically listing the documents it is validating, the certification cannot be regarded to be certifying any specific form of evidence. The final determination of whether evidence meets the plain language requirements of a regulation lies with USCIS. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988) (finding that the appropriate entity to determine eligibility is USCIS).

Each of the documents certifying the translations that [redacted] performed are identical in every way, from the wording, word placement on the page, and his signature. Equally as important, none of the certification documents identified the foreign language document the translator was certifying. Therefore, the certification in the record effectively serves as a blanket translation certificate. But as noted above, the regulation does not contain any provision that allows for such a blanket translation certificate. The submission of a single translation certification that does not identify the document or documents it purportedly accompanies, does not meet the requirements of the regulation at 8 C.F.R. § 103.2(b)(3). Consequently, any foreign language document containing

deficiencies in translation or based on a this blanket certification of translation is not probative evidence.

B. We Withdraw the Director's Affirmative Determination Relating to Two Regulatory Criteria

As we noted, the Director decided the Petitioner met four regulatory criteria without offering any analysis describing why they ruled in the affirmative. But as we explain below, we do not agree with the Director on all those determinations, and we will withdraw their decision relating to two of the criteria. The effect on the Petitioner's case is he no longer qualifies under step one of the multi-step process required to demonstrate eligibility as an alien of extraordinary ability.

1. "Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation." 8 C.F.R. § 204.5(h)(3)(iii).

This criterion contains multiple evidentiary requirements the Petitioner must satisfy. First, the published material must be about the Petitioner and the contents must relate to the Petitioner's work in the field under which they seek classification as an immigrant. The published material must also appear in professional or major trade publications or other major media. Professional or major trade publications are intended for experts in the field or in the industry. To qualify as major media, the Petitioner must establish the circulation statistics are high relative to other similar forms of media. The final requirement is that the Petitioner provide each published item's title, date, and author and if the published item is in a foreign language, they must provide a translation that complies with the requirements found at 8 C.F.R. § 103.2(b)(3). The Petitioner must submit evidence satisfying all of these elements to meet the plain language requirements of this criterion.

In addition to the issue we detailed above relating to the translator's certification, the quality of the Petitioner's evidence relating to the [redacted] newspaper is inadequate. The Petitioner provided a distant photograph of a newspaper showing multiple articles in which the original text in a foreign language is not wholly perceptible and legible. But the translation is even more inadequate as it appears the translator attempted to recreate the entire distant photograph superimposing English onto the image resulting in various sized letter fonts that is as equally as illegible as the original photograph.

Setting aside these issues with this evidence, the Petitioner did not demonstrate the [redacted] newspaper is one of the publication types the regulation requires. The Petitioner characterized it as a professional publication in this manner:

> The Rudge Ramos Journal is recognized as the official professional and academic publication outlet for the [redacted] based in [redacted] Brazil. Although the publication is run by students from the [redacted] it is designed to serve a specialized academic and professional readership, particularly those interested in developments within the [redacted] which includes the cities of [redacted] and [redacted]

Section 101(a)(32) of the Act defines the term "profession" as one that "shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries." The regulation at 8 C.F.R. § 204.5(h)(3)(2) states: "*Profession* means one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation." A professional publication is therefore, one that is related to occupations that are listed in section 101(a)(32) of the Act, or those that require a United States baccalaureate degree or its foreign equivalent as the minimum requirement for entry into the occupation.

But the Petitioner did not offer evidence to support his assertion that the [redacted] newspaper is a professional publication. The Petitioner's unsupported statements have little evidentiary value and will not make a prima facie eligibility showing, much less satisfy their burden of proof. *See Matter of Mariscal-Hernandez*, 28 I&N Dec. 666, 673 (BIA 2022); *see also Matter of Azrag*, 28 I&N Dec. 784, 787 (BIA 2024). It appears the Petitioner then attempted to argue this publication was a form of major media and in doing so he stated "[b]y reaching the referred cities, more than 1.7 million individuals can be reached by the newspapers, and at [redacted] more than 50 thousand persons can be reached." But a publication's *possible* reach is not the measure of what constitutes major media. *See generally* 6 *USCIS Policy Manual* F.2(B)(1), https://www.uscis.gov/policymanual (noting the salient aspects to demonstrate whether evidence is major media is "the [publication's] relative circulation, readership, or viewership"). This evidence does not satisfy the Petitioner's burden of proof under this criterion.

The Petitioner's next claim under this criterion relates to Sindicotnet. The Petitioner presents this online portal as focusing on the interests of property management professionals and companies. Above we explain the type of periodical the regulation anticipates as a professional publication, but the Petitioner does not explain how the Sindicotnet online portal equates to a professional publication. We note one further evidentiary deficiency. The English translated version of this article reflects it was "Machine Translated by Google." This is out of compliance with the translation of foreign documents as required by the regulation at 8 C.F.R. § 103.2(b)(3).

And finally, the Petitioner claims an article from [redacted] qualifies as it is a "major newspaper in the richest state of Brazil." Here, there is no need to evaluate whether this publication is one of the types the regulation requires as the article was not about the Petitioner and instead discussed how condominium residents' lack of interest can negatively impact condominium management. While the article referred to the Petitioner and quoted him, it was not about him and relating to his work in the field for which classification is sought. An article that is not about the Petitioner does not meet this regulatory criterion. *See Mussarova v. Garland*, 562 F. Supp. 3d 837, 848–49 (C.D. Cal. 2022) (finding the published material criterion's requirements are not satisfied where the articles are about events in which a foreign national completed but were not about them and citing *Noroozi v. Napolitano*, 905 F. Supp. 2d 535, 545 (S.D.N.Y. 2012)); *see also generally, Negro-Plumpe v. Okin*, No. 2:07-CV-820-ECR-RJJ, 2008 WL 10697512, at *3 (D. Nev. Sept. 9, 2008) (upholding a finding that articles about a show or a character within a show are not about the performer).As a result, this article also fails to adhere to the regulation's mandates.

In summary, none of the evidence the Petitioner offered for the record is of adequate quality or content to warrant a positive outcome and it has not met the plain language requirements of the regulation.

2. "Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought." 8 C.F.R. § 204.5(h)(3)(iv).

This criterion requires not only that the Petitioner was selected to serve as a judge, but also that he is able to produce evidence he actually participated as a judge. Additionally, these duties must have been directly judging the work of others in the same or an allied field in which the Petitioner seeks an immigrant classification within the present petition. The Petitioner must submit evidence satisfying all of these elements to meet the plain language requirements of this criterion.

Here, the Petitioner claims eligibility based on his role evaluating the final theses of undergraduate and postgraduate students in the fields of controllership, accounting, and finances. He indicates this was part of the [redacted] process in his home country. The Petitioner equates his performance in this role as:

> [S]imilar to a senior thesis or capstone project in the United States. It consists of an extensive and formal research project that students must complete demonstrate [sic] their comprehensive understanding of their field of study. It involves selecting a research topic relevant to the student's academic discipline, conducting thorough research, and producing a detailed written report. The final evaluation for this research project is a defense presentation.

The Petitioner presented a single Declaration of Participation reflecting he participated in a course judging the work of student presentations for undergraduates. However, he did not organize his initial evidence in a manner that would allow the Director to easily locate this, or related documents. We reviewed the approximately 600 pages of evidence the Petitioner submitted at the time he filed the petition, but we were unable to locate the supporting material to evaluate the declaration's full content. In visa petition proceedings, it is a petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). We are neither expected to be mind readers, nor are we required to scour the record ourselves in search for one piece of eivdence. *Bronner on Behalf of Am. Stud. Ass'n v. Duggan*, 962 F.3d 596, 611 (D.C. Cir. 2020) (citing *Schneider v. Kissinger*, 412 F.3d 190, 200 n.1 (D.C. Cir. 2005); *Sierra Club v. EPA*, 925 F.3d 490, 496 (D.C. Cir. 2019)).

But even setting that aside, a review of the portion of the declaration the Petitioner quoted in his appeal brief, his role was reviewing presentations from undergraduate students and not judging "the work of others in the same or an allied field." As undergraduate students are not "in the field," it does not appear that the Petitioner's achievements here are sufficient to satisfy this criterion's requirements.

We acknowledge that USCIS policy reflects the possibility that serving as a member of a PhD dissertation committee that makes the final judgment as to whether a candidate's body of work satisfies the requirements for a doctoral degree, as evidenced by departmental records could serve as qualifying evidence under this criterion. *See generally* 6 *USCIS Policy Manual*, *supra*, F.2(B)(1). Nevertheless,

the Petitioner failed to document for the record that his performance on the [redacted] is equivalent to serving on a PhD dissertation committee as described in agency policy. The rigor involved in the two processes do not appear to be adequately similar. For instance, the Petitioner indicated the [redacted] process is for undergraduate and postgraduate students, but he neither asserted nor documented through evidence that his evaluation was at the doctoral level.

C. The Other Denied Criteria Remain Unmet

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 he is a member of an association in his 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 claimed his membership in the [redacted] and provided evidence related to the group to include their bylaws. The Director determined that the Petitioner did not meet the requirements of this criterion. The Director concluded the bylaws did not demonstrate that organizational membership eligibility was judged by recognized national or international experts in their field, or that the association required outstanding achievements of its members.

On appeal, the Petitioner again points to the bylaws claiming the process is rigorous and involves:

> [A] comprehensive evaluation by recognized experts in the field. Applicants must provide a Character Reference Form or a letter of membership in good standing from a recognized professional body, an Experience Verification form, a detailed CV, and certified copies of their highest academic qualifications. This process ensures that only individuals with outstanding achievements and professional qualifications are admitted . . . .

We do not agree with the Petitioner's assessment that the [redacted] "process ensures that only individuals with outstanding achievements and professional qualifications are admitted." What is absent from the Petitioner's appeal is a direct reference to what portion of the bylaws shows this entity utilizes nationally or internationally recognized experts to judge the achievements of prospective members to determine if the achievements are outstanding, and in turn that the association utilizes that determination as a condition of eligibility for prospective members. So even in the appeal, the Petitioner has not satisfied the plain language requirements for this criterion.

2. "Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field." 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 claimed his work as a professor teaching those who have, in turn, made significant contributions in his area of work served as his contribution to the field. The Director determined that the Petitioner did not meet the requirements of this criterion. The Director noted that the contributions to the Petitioner's field must have been as a result of his own achievements and not those of his students. Within the appeal, the Petitioner continues to claim that he should be able to satisfy this criterion's requirements relying on his students' performance after they have left his tutelage. He views this as "a testament to his impact on the academic and professional landscape," and that his efforts have a ripple effect in the field.

We observe the regulation requires the contributions in the field to directly be the Petitioner's and it does not allow for tangential, indirect, or secondary effects as allowing such a disconnect between his achievements and the resulting impact in the field is too tenuous. And the present situation is not one in which one of the Petitioner's students attained among the highest achievements in the field while also under his direct tutelage such that there is a more contemporaneous nexus between his contribution and the student's performance.

The type of achievements the regulation requires are the Petitioner's own, and he claims some of his own achievements in these proceedings, but those fall short of this criterion's mandates. The Petitioner's own accomplishment he identifies relates to his development of control systems and strategic plans enhancing operational efficiency and financial performance. He surmises that this results in what he characterizes as "creating strategic financial plans and implementing audit and internal control structures at a joint venture between [redacted] and [redacted] in Brazil."

While he may identify this achievement as the originality of his work, he has not demonstrated his methods were adequately effective to the point they were broadly duplicated in his industry. The Petitioner's appeal only points to the assertions in his initial filing correspondence that accompanied the petition, and we already noted his unsupported statements have little evidentiary value. *See Mariscal-Hernandez*, 28 I&N Dec. at 673. Even a review of the support letter from [redacted] who indicated he was the president of the joint venture between [redacted] and [redacted] worldwide did not explain how the Petitioner's achievements made an impact within the field beyond his employer and [redacted]

A petitioner's burden of proof comprises 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); *also see* the definition of burden of proof from *Black's Law Dictionary* (12th ed. 2024). First, a petitioner must satisfy the burden of production. As the term suggests, this burden requires a filing party to produce evidence in the form of documents, testimony, etc. that adheres to the governing statutory, regulatory, and policy provisions sufficient to have the issue decided on the merits.

Second, a petitioner must satisfy the burden of persuasion, meaning they must establish the degree to which their arguments and evidence should persuade or convince USCIS that the requisite eligibility parameters have been met (i.e., the obligation to persuade the trier of fact of the truth of a proposition). *Dir., Office of Workers' Comp. Programs, Dep't of Labor v. Greenwich Collieries*, 512 U.S. 267, 274 (1994). The level at which petitioners must persuade in the present context is the preponderance of the evidence. Whether a petitioner is able to show that a particular fact or event is more likely than not to occur is the determinant of whether they have met the preponderance of the evidence standard of proof.

Here, the Petitioner has not met his burden of proof to demonstrate both that his contributions were original, and that they were of major significance in the field.

III. CONCLUSION

After our withdrawal of the Director's grant of the above criteria, 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 those 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 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.