U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37192143

Date: APR. 09, 2025

Appeal of Texas Service Center Decision

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

The Petitioner, a tattoo artist, seeks classification as an individual 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 Texas Service Center denied the petition, concluding that although the Petitioner satisfied at least three of the initial evidentiary criteria, as required, he did not show his sustained national or international acclaim and demonstrate that he is among the small percentage at the very top of the field of endeavor. The matter is now before us on appeal pursuant to 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 demonstrate that:

- They have "extraordinary ability in the sciences, arts, education, business, or athletics;"
- They seek to continue work in their field of expertise in the United States; and
- Their work would substantially benefit the country.

Section 203(b)(l)(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-part analysis. First, a petitioner can demonstrate sustained acclaim and recognition of their 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 they

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). The regulation at 8 C.F.R. § 204.5(h)(4) allows a petitioner to submit comparable material if the standards at 8 C.F.R. § 204.5(h)(3)(i)-(x) do not readily apply to the individual's occupation.

Where a petitioner meets these initial evidence requirements, we then 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 (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).

II. ANALYSIS

A. Evidentiary Criteria

Because the Petitioner has not claimed 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 met at least three of the claimed evidentiary criteria. However, the Director concluded that the Petitioner did not show that he garnered sustained national or international acclaim and that his achievements have been recognized in the field of endeavor, demonstrating he is one of that small percentage who has risen to the very top of the field.

On appeal, the Petitioner argues that he satisfied more criteria than those the Director specifically addressed and that the evidence in the aggregate establishes his eligibility as an individual of extraordinary ability. Because the Petitioner has already shown that he fulfills the minimum requirements of at least three criteria, we will evaluate the totality of the evidence based on the documentation presented to the Director in the context of the final merits determination below.[1]

B. Final Merits Determination

As indicated above, we will evaluate whether the Petitioner has demonstrated, by a preponderance of the evidence, that he: 1) has sustained national or international acclaim;[2] 2) is one of the small percentage at the very top of the field of endeavor; and 3) his achievements have been recognized in the field through extensive documentation. In a final merits determination, we analyze an individual's accomplishments and weigh the totality of the evidence to determine if their successes are sufficient to demonstrate extraordinary ability in their field of endeavor. *See* section 203(b)(1)(A)(i) of the Act;

[1] *See* 6 *USCIS Policy Manual* F.2(B)(2), https://www.uscis.gov/policymanual.

[2] *See* 6 *USCIS Policy Manual*, *supra*, at F.2(A)(1) (stating that such acclaim must be maintained and providing *Black's Law Dictionary's* definition of "sustain" as "to support or maintain, especially over a long period of time . . . To persist in making (an effort) over a long period of time").

8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20.[3] Following a review of the evidence before us, we conclude that the Petitioner has not demonstrated eligibility as an individual of extraordinary ability.

The record shows that the Petitioner is an experienced tattoo artist who founded and is operating a tattoo studio. As discussed further below, the Petitioner has also received awards, conducted review work, made philanthropic contributions, and authored material. However, upon review of the totality of the evidence, the Petitioner has not demonstrated that his achievements are reflective of a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990). Furthermore, the Petitioner has not shown that he has risen to that small percentage at the very top of his field of endeavor. *See* 8 C.F.R. § 204.5(h)(3). The commentary for the proposed regulations implementing section 203(b)(1)(A)(i) of the Act provides that the "intent of Congress that a very high standard be set for aliens of extraordinary ability is reflected in this regulation by requiring the petitioner to present more extensive documentation than that required" for lesser classifications. 56 Fed. Reg. 30703, 30704 (July 5, 1991). Here, the Petitioner has not established that his career meets this very high standard.

The Petitioner provided evidence showing that he received over a dozen awards in various tattoo artistry categories between 2016 and 2021. For instance, the Petitioner provided letters and promotional materials offering background information about the events – mainly expos and conventions – where the awards were won, thereby indicating that he has received some recognition for his work in the field. In one support letter, the organizer of the [redacted] – [redacted] – described the 2018 event as "international in scope" and stated that the event provided a platform showcasing 160 tattoo artists from Uruguay, Chile, Argentina, Brazil, and Mexico. The letter states that "[w]inners were awarded prizes including tattoo machines, healing creams, participation certificates, and trophies highlighting technical skill and commitment to safety and hygiene." Other documents provided information about the [redacted] event in 2020 where the Petitioner was awarded a first-place trophy in the [redacted] category honoring a [redacted] artist who is deemed "important for the [redacted] Culture heritage." While these and other awards in the record[4] indicate that the Petitioner has been recognized for his work in the tattoo artistry field, they do not establish that he is among that small percentage at the very top of the field, nor do they show that the Petitioner garnered national or international acclaim. We note that USCIS has long held that even athletes performing at the major league level do not automatically meet the statutory standards for classification as an individual of "extraordinary ability." *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994).

[3] *See* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(2) (instructing that USCIS officers should consider the petition in its entirety to determine eligibility according to the standard – sustained national or international acclaim and the achievements have been recognized in the field of expertise, indicating that the person is one of that small percentage who has risen to the very top of the field of endeavor).

[4] While we may not discuss each piece of evidence in the record in our decision, we have reviewed and considered each one. When USCIS provides a reasoned consideration to the petition, and has made adequate findings, it will not be required to specifically address each claim the Petitioner makes, nor is it necessary for it to address every piece of evidence the Petitioner presents. *Guaman-Loja v. Holder*, 707 F.3d 119, 123 (1st Cir. 2013) (citing *Martinez v. INS*, 970 F.2d 973, 976 (1st Cir.1992); *see also Kazemzadeh v. U.S. Atty. Gen.*, 577 F.3d 1341, 1351 (11th Cir. 2009); *Casalena v. U.S. INS*, 984 F.2d 105, 107 (4th Cir. 1993).

The Petitioner also highlighted his participation in a 2019 philanthropic event and his publication of two works – one, a book detailing tattoo techniques, and the other, a booklet on pre- and post-tattoo recovery. The Petitioner provided photographs of the front and back covers of the publications and corresponding promotional material, showing that both publications were being sold online. Regarding the book on tattoo techniques, the Petitioner pointed to his "achievement of selling over 104 physical copies of his book on [redacted] in Brazil" and on appeal he refers to both publications as "influential" and "widely acclaimed within professional circles." The Petitioner has not explained how the sale of 104 copies of his book has impacted his industry nor is there evidence, beyond the support letters on record,[5] showing that either publication has been "widely acclaimed," as asserted on appeal. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (establishing that assertions must be supported by relevant, probative, and credible evidence). Regarding the philanthropic event, the Petitioner provided evidence of media coverage in the form of a transcript from a television interview where he discussed his role in a project dedicated to October's breast cancer awareness by using his skills as a tattoo artist to reconstruct the "halo" on the breasts of breast cancer survivors. While we acknowledge these accomplishments and contributions, the Petitioner has not established that either his publications or his participation in a philanthropic event, individually or in the aggregate, reflect a career of acclaimed work in the field or indicate that the Petitioner met a "very high standard" by submitting "more extensive documentation than that required" for lesser classifications. *See* 56 Fed. Reg., *supra*, at 30704.

Likewise, relating to the Petitioner's service as a judge of the work of others, an evaluation of the significance of his experience is appropriate to determine if such evidence indicates the required extraordinary ability for this highly restrictive classification. *See Kazarian,* 596 F. 3d at 1121-22. The record shows that the Petitioner judged tattoo competitions at six expos and conventions in the three-year period from 2018 to 2021. In a personal declaration, the Petitioner stated that invitations to judge a competition "are generally issued by prestigious event organizers who select judges based on artistic excellence and significant contributions to the tattoo community," and he highlights a support letter from the organizer of one such competition – [redacted] However, despite referring to the Petitioner's "creativity and exclusive technique" and stating that his "contribution was incredible," the organizer did not provide any details to support these characterizations, nor did he provide evidence of the criteria used to select a judge in this competition, adding only that the Petitioner was selected, in part, based on his prior work with the event organizer in an annual project.

In another supporting statement, an organizer of the [redacted] Convention similarly praised the Petitioner's "outstanding contributions and expertise in the field of tattoo artistry" and vaguely referred to the Petitioner's "impeccable reputation, unwavering commitment, and extensive knowledge in the tattoo industry." However, like the previously discussed supporting statement, this statement also offered no details as to the criteria used for selecting a judge.

Further, while the Petitioner underscores the "numerous invitations to act as a judge in tattoo competitions" and claims that being selected "reflects the recognition of my career and the impact of

[5] *See* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(3) (stating that support letters, while not without weight, should not form the cornerstone of a successful claim for this classification and should be corroborated by documentary evidence in the record).

my contributions," he has not shown how his judging activities place him at the very top of the field. He also has not shown that he garnered wide attention from the field based on his evaluation work, despite claiming that invitations to judge "are generally issued by prestigious event organizers who select judges based on artistic excellence and significant contributions to the tattoo community." As noted earlier, the record discusses the selection criteria in broad terms, indicating that the Petitioner was selected based on his "reputation for artistic excellence, technical innovation, and [] commitment to elevating tattooing standards." Again, the record contains no probative evidence as to the specific criteria used for selecting a judge for a tattoo competition. *See Matter of Chawathe*, 25 I&N Dec. at 376. Without evidence that sets the Petitioner apart from others in his field, the Petitioner has not shown that his judging experience places him among that small percentage who has risen to the very top of the field of endeavor. As such, the Petitioner has not shown that his judging experience contributed to a finding that he has a career of acclaimed work in the field or that his career is indicative of the required sustained national or international acclaim.

Lastly, the Petitioner underscores his winning of "numerous awards in various categories" as a demonstration of his "exceptional talent and technical skills" and as evidence of his "credibility and recognition in the industry." However, being recognized for his skills in the tattoo industry does not automatically place him at the very top of the field. Here, the Petitioner has not demonstrated the significance of his awards, individually or in the aggregate, such as prompting wide praise for his work from critics, drawing notable crowds, raising attendance, or resulting in the success of the events. On appeal, the Petitioner contends that an article about a [redacted] that he attended was recognized in the Brazilian media. He asserts that the article "highlighted the event's international participation" and that it "underscored [the Petitioner]'s contribution to elevating the status of tattooing as a legitimate and respected art form." However, the article's content primarily offers information about the expo, such as the dates, price, and types of activities one would expect to see if attending like "sales of products for tattoo artists, sales of products for the general public, a DJ, a food court and kids' play ground [sic]." Although the article mentions the Petitioner, it does not discuss his contributions and only lists his name "among other[]" tattoo artists whose attendance was confirmed.

Further, while the Petitioner discusses several support letters from "industry experts" who highlight such factors as "his many awards" or the number of attendees at some of the events where the Petitioner received awards, the record lacks sufficient evidence that increased attendance was prompted by the Petitioner's participation. *See id.* Moreover, the evidence does not show that the Petitioner's work reflects a career of acclaimed work in the field, nor does it show that the Petitioner's work garnered a level of attention or was regularly seen at highly reputable venues consistent with being among that small percentage who has risen to the very top of the field of endeavor.

The record as a whole, including the evidence discussed above, does not establish the Petitioner's eligibility for the benefit sought.[6] Here, the Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than those progressing toward the top. *Price*, 20 I&N Dec. at 954 (concluding that even major league level athletes do not automatically meet the statutory standards for classification as an individual of "extraordinary ability,"); *Visinscaia*, 4 F. Supp. 3d at 131 (internal quotation marks omitted) (finding that the

[6] *See* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(2) (providing that while a person may be stronger in one particular evidentiary area than in others, the totality of the evidence must establish that the person is extraordinary).

extraordinary ability designation is "extremely restrictive by design,"); *Hamal v. Dep't of Homeland Sec. (Hamal II)*, No. 19-cv-2534, 2021 WL 2338316, at *5 (D.D.C. June 8, 2021), *aff'd*, 2023 WL 1156801 (D.C. Cir. Jan. 31, 2023) (determining that EB-1 visas are "reserved for a very small percentage of prospective immigrants"). *See also Hamal v. Dep't of Homeland Sec. (Hamal I)*, No. 19-cv-2534, 2020 WL 2934954, at *1 (D.D.C. June 3, 2020) (citing *Kazarian,* 596 at 1122 (upholding denial of petition of a published theoretical physicist specializing in non-Einsteinian theories of gravitation) (stating that "[c]ourts have found that even highly accomplished individuals fail to win this designation")); *Lee v. Ziglar*, 237 F. Supp. 2d 914, 918 (N.D. Ill. 2002) (finding that "arguably one of the most famous baseball players in Korean history" did not qualify for visa as a baseball coach). In this case, the Petitioner has not shown the significance of his work is indicative of the required sustained national or international acclaim or it is consistent with a "career of acclaimed work in the field" as contemplated by Congress. *See* H.R. Rep. No. at 59; *see also* section 203(b)(1)(A) of the Act. While the Petitioner need not establish that there is no one more accomplished to qualify for the classification sought, the record is insufficient to demonstrate that he is among the small percentage at the top of his field. *See* 8 C.F.R. § 204.5(h)(2).

III. CONCLUSION

For the reasons discussed above, the Petitioner has not demonstrated her 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.