U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37199667

Date: APR. 09, 2025

Appeal of Nebraska Service Center Decision

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

The Petitioner is a petroleum and industrial engineer 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 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 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

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 five of the regulatory criteria. The Director decided that the Petitioner satisfied one of the criteria relating to authorship of scholarly articles. However, he had not satisfied the criteria associated with prizes or awards, membership, published material, or performing in a leading or critical role. On appeal, the Petitioner maintains that he meets the previously claimed criteria except for the membership criterion. After reviewing all the evidence in the record, we conclude the Petitioner has not shown he qualifies for this restrictive immigrant classification.

A. "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).

The Director discussed the evidence submitted for this criterion and found that the Petitioner did not establish his eligibility. On appeal, the Petitioner does not contest the Director's findings for this criterion or offer additional arguments. Therefore, the Petitioner has abandoned or forfeited his eligibility claims under this criterion. Any argument a filing party does not raise on appeal is deemed waived. *Matter of C-A-R-R*, 29 I&N Dec. 13, 18 (BIA 2025). The normal course is to decline to entertain arguments the filing party forfeits. *Ohio v. Env't Prot. Agency*, 603 U.S. 279, 298 (2024).

B. "Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media." 8 C.F.R. § 204.5(h)(3)(vi).

This criterion contains several evidentiary elements the petitioner must satisfy. First, the Petitioner must demonstrate that they are a member of an association "in the field for which classification is sought." Next, the petitioner must demonstrate both of the following: (1) that the associations utilize nationally or internationally recognized experts to judge the achievements of prospective members to determine if the achievements are outstanding, and (2) that the associations use this outstanding determination as a condition of eligibility for prospective membership. It is insufficient for the association itself to determine if the achievements were outstanding, unless nationally or internationally recognized experts in the Petitioner's field who represent the association render this determination. It is also insufficient for the Petitioner to indicate that they were admitted to the

association because of their outstanding achievements; the Petitioner must show that the association requires outstanding achievements of all prospective members. The Petitioner must satisfy all of these elements to meet the plain language requirements of this criterion.

Within the initial filing, the Petitioner indicated he was engaged in scientific research and he submitted "a copy of [his] monographic work" as evidence under this criterion. The Director determined that the Petitioner met the requirements here. However, the evidence the Petitioner submitted for the record does not demonstrate that he has satisfied this criterion's requirements. Lacking from the record is material about the publication to demonstrate it is one of the required publication types, or evidence establishing the journal even exists. Although the Petitioner presents the title of his work, he did not identify the publication's name and it is not apparent from the English translation. Because the record lacks such evidence, we withdraw the Director's favorable determination under this criterion.

C. "Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor." 8 C.F.R. § 204.5(h)(3)(i).

This criterion contains several evidentiary elements, all of which must be met to satisfy the regulation. According to the plain language of the regulation the evidence must establish: (1) the alien is the recipient of the prizes or the awards; (2) those accolades are nationally or internationally recognized; and (3) each prize or award is one for excellence in the field of endeavor.

The Petitioner claimed two honorarium certificates under this criterion and the Director determined that he did not meet the regulatory requirements here. The Director's request for evidence (RFE) conveyed that the certificates appeared to represent local work-related honors instead of accolades recognized by the field. The Director also concluded the RFE response materials were inadequate to satisfy the criterion's requirements as two photographs of the evidence coupled with counsel's assertions were not sufficient to meet his burden of proof under this requirement. On appeal, the Petitioner offers additional assertions about his evidence similar to the claims he presented to the Director. He does not offer any additional evidence with the appeal.

After reviewing the record, we agree with the Director that the Petitioner's assertions, coupled with the assertions of his attorney, and his evidence consisting of two photographs falls short of meeting his burden of proof here. 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 true is the determinant of whether they have met the preponderance of the evidence standard of proof.

In summary, the Petitioner has not submitted evidence that meets the plain language requirements of this criterion.

D. Remaining Claimed Criteria Cannot Demonstrate the Petitioner's Eligibility

We conclude that although the Petitioner claims he meets two additional criteria on appeal, because his arguments fail on any single criterion discussed above, that means he cannot numerically meet the required number of criteria and it is unnecessary for us to make a decision on these additional grounds 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 these 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).

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 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.