U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37571444

Date: APR. 14, 2025

Appeal of Texas Service Center Decision

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

The Petitioner is a general and operations manager 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 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 six of the regulatory criteria. The Director decided that the Petitioner satisfied two of the criteria relating to judging and his performance in a leading or critical role but that he had not satisfied the remaining claimed criteria. On appeal, the Petitioner maintains that he meets the criteria he claimed before the Director. After reviewing all the evidence in the record, we conclude he has not demonstrated he is eligible for this immigrant classification.

A. "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 that 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.

We are withdrawing the Director's positive determination for this criterion. The Petitioner's field of specification for which he seeks an immigrant classification is general and operations managers. Considering that, he must demonstrate that when he served as the judge of the work of others, he was performing judging duties on those in the same or an allied field (e.g., general and operations managers). However, those who he judged were employees of his company and the Petitioner has not established that those personnel were categorized within the same or allied field. As a result, he has not met all of this criterion's mandates and we withdraw the Director's favorable determination here.

B. "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 several achievements under this criterion before the Director who decided none of those items met this criterion's requirements. Now on appeal, the Petitioner generally claims the Director overlooked key evidence claiming because the entities that issued the award or certificates were known in the industry, that this ostensibly transforms the accolades into nationally recognized achievements for excellence in the Petitioner's field of endeavor.

National and international recognition results, not from the individual who signed the prize or the award, but through the awareness of the accolade in the eyes of the field nationally or internationally. This recognition should be evident through specific means; for example but not limited to, national or international-level media coverage. Additionally, unsupported conclusory letters from those in the Petitioner's field are not sufficient evidence that a particular prize or award is nationally or internationally recognized. Sufficiently probative evidence that an award is nationally or internationally recognized is generally material from sources besides the issuing entity. *Krasniqi v. Dibbins*, 558 F. Supp. 3d 168, 183 (D.N.J. 2021).

But the Petitioner does not explain what evidence he relies on to demonstrate any accolade was nationally recognized, nor that any were issued for excellence in the field. As "the regulation specifies that the awards must be 'for excellence in the field of endeavor,' it is reasonable for USCIS to require evidence that the award is merit-based . . . . , which discounts evidence showing mere participation in the field." *Krasniqi*, 558 F. Supp. 3d at 182–83. The nature of the award must be proven. *Id.* at 183. Here, the Petitioner made neither showing (i.e., national recognition or awarded for excellence) and he has not submitted evidence that meets the plain language requirements of this criterion.

C. "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 initially claimed two memberships: one in the [redacted] in the Kyrgyz Republic and another representing [redacted] CJSC. The Director determined that the Petitioner did not meet the requirements of this criterion. On appeal, the Petitioner lists both memberships, he does not explain how the Director might have erred, and for the first time he asserts eligibility based on comparable evidence under 8 C.F.R. § 204.5(h)(4).

Not only has the Petitioner failed to describe what error the Director made under this criterion, but also because the regulation put the Petitioner on notice and gave him a reasonable opportunity to provide this comparable evidence, we will not consider it for the first time on appeal. *Matter of*

Furtado, 28 I&N Dec. 794, 801–02 (BIA 2024) (declining to consider new eligibility within an appeal when the filing party was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the denial); *see also Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533, 537 (BIA 1988).

The Petitioner has not submitted evidence that meets the plain language requirements of this criterion.

D. "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 plain language of this criterion requires a comparison against "others in the field." Salary information for those performing work in a related but distinct occupation with different responsibilities is not a proper basis for comparison. Additionally, average salary levels are not comparable when evaluating whether a salary was high "in relation to others in the field." *Strategati, LLC v. Sessions*, No. 3:18-CV-01200-H-AGS, 2019 WL 2330181, at *7 (S.D. Cal. May 31, 2019) (agreeing that average salary levels do not allow for an appropriate basis for comparison in determining a high salary "in relation to others in the field").

The Petitioner must submit documentation of the earnings of those in their occupation performing similar work. While we acknowledge that a district court's decision is not binding precedent, we note that in *Racine v. INS*, 1995 WL 153319 at *4 (N.D. Ill. Feb. 16, 1995), the court stated, "[T]he plain reading of the statute suggests that the appropriate field of comparison is not a comparison of Racine's ability with that of all the hockey players at all levels of play; but rather, Racine's ability as a professional hockey player within the NHL. This interpretation is consistent with . . . the definition of the term 8 C.F.R. § 204.5(h)(2), and the discussion set forth in the preamble at 56 Fed. Reg. 60898–99."

The Petitioner must present evidence of objective earnings data showing that they have commanded a "high salary" or "significantly high remuneration" in comparison with those performing similar work during the same time period. *See Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994) (considering professional golfer's earnings versus other PGA Tour golfers); *see also Skokos v. U.S. 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. Ill. 1996) (considering NHL enforcer's salary versus other NHL enforcers); *Muni v. INS*, 891 F. Supp. 440, 444–45 (N.D. Ill. 1995) (comparing salary of NHL defensive player to salary of other NHL defensemen).

The Petitioner provided material related to his former employer in Turkey to include a letter from the company's financial manager, an organizational chart, and evidence associated with their employees' salaries. The Director determined that the Petitioner did not meet the requirements of this criterion. On appeal, the Petitioner first argues the material in the record showed his salary was in the top percentile for business professionals in the region. He continues indicating "comparative analysis in underdeveloped markets requires flexibility in evaluating high remuneration" and it "should not be dismissed merely because benchmarks differ from those in more developed economies."

But the Director did not issue an adverse determination under this criterion because the material originated from a country less developed than the United States. Instead, the Director discussed the evidence informing the Petitioner that salary surveys showing average salary information was not an appropriate basis by itself to illustrate his salary was high in relation to others in the field.

Some of the Petitioner's evidence is illegible and the record lacks material demonstrating salaries in Turkey for those in the Petitioner's field of general and operations managers during the relevant timeframe. The Petitioner has not demonstrated that material relating to other countries during an unspecified timeframe serves as a proper basis in which to compare to his salary. *See Price*, 20 I&N Dec. 953, 954. And again, the Petitioner advances comparable evidence claims under this criterion for the first time on appeal. We detailed above why we will not address such claims.

The Petitioner has not submitted evidence that meets the plain language requirements of this criterion.

E. We Reserve the Petitioner's Remaining Eligibility Claims on Appeal

We conclude that although the Petitioner satisfies the leading or critical role criterion, he does not meet the criteria we discuss above. While he argues and submits evidence for one additional criterion on appeal relating to contributions of major significance at 8 C.F.R. § 204.5(h)(3)(v), it is unnecessary that we make a decision on this additional ground 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 the remaining issue. *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. *Price*, 20 I&N Dec. at 954. 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.