U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 36984150

Date: APR. 14, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a systems engineer specializing in education technology, 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.

SCOPS denied the petition, concluding that the Petitioner did not satisfy at least three of the ten initial evidentiary criteria. 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

Section 203(b)(1)(A) of the Act makes visas available to immigrants with extraordinary ability if:

> (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
>
> (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
>
> (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

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 the 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 categories 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 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

The Petitioner is seeking to be classified as an alien of extraordinary ability based on his work as a systems engineer in the field of education technology. He intends to establish a business which would provide universities with an e-learning platform that integrates with academic and administrative tools.

A. Evidentiary Criteria

Because the Petitioner has not indicated or established that he has received a major, internationally recognized award, the issue to be addressed on appeal is whether the Petitioner satisfied at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). SCOPS determined that although the Petitioner met two of the claimed evidentiary criteria, leading or critical role at 8 C.F.R. § 204.5(h)(3)(viii) and high salary or other renumeration at 8 C.F.R. § 204.5(h)(3)(ix), he did not establish eligibility for the third claimed category, original contributions of major significance at 8 C.F.R. § 204.5(h)(3)(v). On appeal, the Petitioner claims eligibility for this criterion. Upon de novo review, the Petitioner has not established he meets the requirements for original contributions of major significance or otherwise satisfies at least three of the initial evidentiary criteria.[1]

For the first time on appeal, the Petitioner claims eligibility and submits new evidence for two additional criteria, membership in associations at 8 C.F.R. § 204.5(h)(3)(ii) and participation as a judge of others' work at 8 C.F.R. § 204.5(h)(3)(iv). The Petitioner did not assert eligibility for these two criteria either at the initial filing of the petition or in response to SCOP's request for evidence. Where a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency prior to issuance of the adverse decision, new eligibility claims will not be considered on appeal or on motion. See Matter of Soriano, 19 I&N Dec. 764, 766 (BIA 1988). We will not consider this newly submitted evidence for the new criteria claims in our decision.

[1] While we may not discuss every document submitted, we have reviewed and considered each one.

For the criterion at 8 C.F.R. § 204.5(h)(3)(v), the Petitioner must submit evidence of his "original scientific, scholarly, artistic, or business-related contributions of major significance in the field."

First, we determine that a petitioner's contributions in their field were original. See generally 6 USCIS Policy Manual F.2(B)(1), https://www.uscis.gov/policy-manual. Next, we examine whether the original contributions are of major significance to the field. Id.

The Petitioner claims his role in creating the Doctor CV platform demonstrates his original business-related contributions of major significance in his field of education technology. A recommendation letter from the founder and CEO of Doctor CV describes Doctor CV as "an [artificial intelligence] platform that analyzes and improves users' resumes to improve their job opportunities." The Petitioner maintains his education technology strategies, his project management skills, and his ability to coordinate multidisciplinary teams were essential to the development of the platform. In support of the criterion, the Petitioner submitted the letter from Doctor CV's founder and CEO, as well as articles and website information about Doctor CV and grants received to develop the platform.[2]

The evidence in the record, however, does not demonstrate the Petitioner's original contributions in his field, or that his contributions were of major significance in his field. The recommendation letter only provides general statements about the Petitioner's contributions, stating he was "instrumental in the initial stages of conception and development of the platform" between 2018 and 2019 and "[h]is mastery in the design and implementation of educational technology strategies, his experience in project management and his ability to coordinate multidisciplinary teams make him an ideal candidate." While letters explaining the nature and significance of a petitioner's contributions may be valuable to evaluating the claimed original contributions and significance, such letters should specifically describe the person's contribution and its significance to the field. Id. Here, the letter and other evidence in the record do not detail the Petitioner's original contributions in developing the platform, or his contribution's significance in his field of education technology.

To establish the major significance of his contributions, the Petitioner focuses on Doctor CV having been recognized for its unique and innovative value to students and individuals seeking to improve their resumes and employment opportunities. The submitted articles about Doctor CV and the printouts from Doctor CV's website describe how Doctor CV's founder and CEO won two grants supported by the governments of Peru and Chile in order to develop the platform, and how the governments and others have used the platform.

The articles and other documents in the record, however, do not discuss the Petitioner's original work or the significance of his original work. Instead, the evidence indicates that the Petitioner's contributions were limited to helping to develop Doctor CV, rather than to his field of education technology. A petitioner must show that their original contributions rise to the level of major

[2] With the appeal, the Petitioner submits new evidence to support his claims under this criterion. The record shows that, before the petition's denial, he had a chance to submit the materials in response to the Director's request for evidence. See 8 C.F.R. § 103.2(b)(11) (requiring the submission of all requested evidence together at one time); see also Matter of Soriano, 19 I&N Dec. at 766 (declining to consider new evidence on appeal because "the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the denial"). We, therefore, will not consider this newly submitted evidence in our decision.

significance in the field as a whole, rather than to a project or to an organization. See Amin v. Mayorkas, 24 F.4th 383, 394 (5th Cir. 2022) (citing Visinscaia v. Beers, 4 F. Supp. 3d at 134). The Petitioner did not establish what original contributions he made, or that his contributions extend beyond his work with Doctor CV and are of major significance in his field.

For the reasons discussed above, the Petitioner did not show he meets this criterion.

B. Summary and Reserved Issue

Although SCOPS determined the Petitioner meets the criteria for leading or critical role at 8 C.F.R. § 204.5(h)(3)(viii) and high salary or other renumeration at 8 C.F.R. § 204.5(h)(3)(ix), the Petitioner has not established he meets the third claimed criterion relating to original contributions of major significance at 8 C.F.R. § 204.5(h)(3)(v). Because the Petitioner cannot fulfill the initial evidentiary requirement for three criteria under 8 C.F.R. § 204.5(h)(3), we need not provide the type of final merits determination referenced in Kazarian v. USCIS, 596 F.3d at 1119-20. Accordingly, we will reserve these issues. See INS v. Bagamasbad, 429 U.S. 24, 25 (1976) (per curiam) (holding that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision).

Nevertheless, we advise that we have reviewed the record in the aggregate, concluding that 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 those progressing toward the top. Matter of Price, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994) (concluding that even major league level athletes do not automatically meet the statutory standards for classification as an individual of "extraordinary ability"); Visinscaia v. Beers, 4 F. Supp. 3d at 131 (internal quotation marks omitted) (finding that the 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"); s*ee 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 v. USCIS, 596 F.3d 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. 2002) (finding that "arguably one of the most famous baseball players in Korean history" did not qualify for the visa as a baseball coach).

Here, 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. 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 the Petitioner has garnered national or international acclaim in the field, and he is one of the small percentage who has risen to the very top of the field of endeavor. See section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2).

III. CONCLUSION

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.

ORDER: The appeal is dismissed.