U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37189062

Date: APR. 17, 2025

Appeal of Texas Service Center Decision

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

The Petitioner, a basketball player, seeks classification as an individual of extraordinary ability in athletics. *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 aliens who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation. *Id.*

The Director of the Texas Service Center denied the petition, concluding that the Petitioner did not establish either that he received a major, internationally recognized award, or that he satisfied at least three of the 10 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) 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 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 10 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).

II. ANALYSIS

The Petitioner described the endeavor as a plan "to be a part of a [redacted] [sic] team to participate in regional, national, and international competitions." He also stated he "intend[s] to develop an initiation work for children and young people, promoting the practice of basketball as a lifestyle and a possibility for them to advance professionally." He further indicated that he "plan[s] to organize and manage a group of senior athletes to practice [redacted] providing opportunities to continue practicing the sport and improving the quality of life of these practitioners."

As noted above, the Director concluded the record does not establish the Petitioner received a one-time achievement of a major, internationally recognized award. The Director further determined that the record does not satisfy, in the alternative, at least three of the 10 criteria listed at 8 C.F.R. §§ 204.5(h)(3)(i)-(x). Specifically, the Director determined that the record does not satisfy the criteria at 8 C.F.R. §§ 204.5(h)(3)(i)-(iv) and (viii), noting that the Petitioner did not assert eligibility under the criteria at 8 C.F.R. §§ 204.5(h)(3)(v)-(vii), and (ix)-(x). On appeal, the Petitioner reasserts that the record satisfies the criteria at 8 C.F.R. §§ 204.5(h)(3)(i)-(ii) and (viii). The Petitioner does not assert on appeal—and the record does not support the conclusion—that the record satisfies the criteria at 8 C.F.R. §§ 204.5(h)(3)(iii)-(vii), and (ix)-(x). The record does not satisfy at least three of the 10 criteria listed at 8 C.F.R. §§ 204.5(h)(3)(i)-(x) for the reasons discussed below.

The criterion at 8 C.F.R. § 204.5(h)(3)(ii) requires "[d]ocumentation 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."

The Director acknowledged that the Petitioner submitted information regarding the [redacted] However, the Director noted that some of that information is dated after the Petitioner filed the Form I-140, Immigrant Petition for Alien Workers, and, thus, cannot establish eligibility, citing 8 C.F.R. § 103.2(b)(1) (providing that petitioners must establish eligibility for a requested benefit at the time of filing the benefit request). The Director further observed, "there is no objective evidence to ascertain whether the [redacted] requires outstanding achievement of its members [and] that outstanding achievements are judged by recognized national or

international experts." Based on those issues, the Director concluded that the record does not satisfy the criterion at 8 C.F.R. § 204.5(h)(3)(ii).

On appeal, the Petitioner asserts that the record satisfies the criterion at 8 C.F.R. § 204.5(h)(3)(ii) because he has "active membership in the [redacted] in addition to being "an active member of [redacted] However, the Petitioner does not assert on appeal—and the record does not support the conclusion—that either the [redacted] or the [redacted] require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields. Therefore, regardless of whether the record establishes the Petitioner is a member of the [redacted] or the [redacted] the record does not satisfy the plain language of 8 C.F.R. § 204.5(h)(3)(ii) because it does not establish that either association requires outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.

Because the record does not satisfy the criterion at 8 C.F.R. § 204.5(h)(3)(ii), and because the Petitioner does not assert on appeal that the record satisfies the criteria at 8 C.F.R. §§ 204.5(h)(3)(iii)-(vii), (ix)-(x), the record would not satisfy at least three of the 10 initial evidentiary criteria, even if it satisfied the criteria at 8 C.F.R. §§ 204.5(h)(3)(i) and (viii). Accordingly, we reserve our opinion regarding whether the record satisfies the criteria at 8 C.F.R. §§ 204.5(h)(3)(i) and (viii). *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

III. CONCLUSION

The Petitioner has not established he received a one-time achievement or, in the alternative, provided evidence that meets at least three of the 10 criteria at 8 C.F.R. §§ 204.5(h)(3)(i)-(x). As a result, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. *See INS v. Bagamasbad*, 429 U.S. at 25; *see also Matter of L-A-C-*, 26 I&N Dec. at 526 n.7. Nevertheless, we have reviewed the record in the aggregate, concluding that it does not support a conclusion that the Petitioner has established the acclaim and recognition required for the classification sought.

The Petitioner has not shown that the significance of his 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) of the Act. Moreover, the record does not otherwise demonstrate that the Petitioner has garnered national or international acclaim in the field, and that 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; *see also* 8 C.F.R. § 204.5(h)(2).

ORDER: The appeal is dismissed.