U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 35772707

Date: JAN. 10, 2025

Appeal of Nebraska Service Center Decision

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

The Petitioner, a logistics consulting executive, requests classification under the employment-based, first-preference (EB-1) immigrant visa category as a noncitizen with "extraordinary ability." *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). Successful petitioners for U.S. permanent residence in this category must demonstrate "sustained national or international acclaim" and extensively document recognition of their achievements in their fields. Section 203(b)(1)(A)(i) of the Act.

The Director of the Nebraska Service Center denied the petition. The Director concluded that, contrary to the Act, the Petitioner did not demonstrate his intent to continue working in his field in the United States or that his U.S. work would substantially benefit the country. The Director also found that, contrary to regulations, the Petitioner did not meet any of the ten initial evidentiary requirements for the requested category – three less than needed for a final merits determination. On appeal, the Petitioner contends that the Director disregarded and misinterpreted evidence.

The Petitioner bears the burden of demonstrating eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Exercising de novo appellate review, *see Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015), we conclude that he established his intent to continue working in his field in the United States and that his work would substantially benefit the country. But, because he has not met the requisite number of evidentiary criteria, we will dismiss the appeal.

I. LAW

To qualify as a noncitizen with extraordinary ability, a petitioner must demonstrate that they:

- Have "extraordinary ability in the sciences, arts, education, business, or athletics;"
- Seek to continue work in their field of expertise in the United States; and
- Through their work, substantially benefit the country.

Section 203(b)(1)(A)(i)-(iii) of the Act.

The term "extraordinary ability" means expertise commensurate with "one of that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). Evidence of extraordinary ability must demonstrate a noncitizen's receipt of either "a major, international recognized award" or satisfaction of at least three of ten lesser evidentiary criteria. 8 C.F.R. § 204.5(h)(3)(i-x).[1]

If a petitioner meets either evidentiary standard and the requirements at section 203(b)(1)(A)(ii), (iii) of the Act, U.S. Citizenship and Immigration Services (USCIS) must then make a final merits determination. To merit approval, the record – as a whole – must establish a petitioner's sustained national or international acclaim and recognized achievements placing them among the small percentage at their field's very top. *See Kazarian v. USCIS,* 596 F.3d 1115, 1119-20 (9th Cir. 2010); *see generally* 6 *USCIS Policy Manual* F.(2)(B), www.uscis.gov/policy-manual.

II. ANALYSIS

A. The Petitioner and His Field

The record shows that the Petitioner, a Kazakhstani native and citizen, earned bachelor's degrees in 'translation and interpretation" and finance from universities in his home country. After working as a manager for about two years at a leasing company, he founded a consumer goods/construction company in Kazakhstan. Three years later, he established a wholesale tea company in the country.

In 2023, the Petitioner came to the United States and formed a company here to provide logistics consulting services. He stated: "My plan is to utilize all my knowledge and experience to contribute to the development of the transportation and logistics industry and make a meaningful impact on the U.S. economy."

We first review the Director's findings that the Petitioner did not demonstrate his intent to continue working in his field in the United States or that his U.S. work would benefit the country.

B. Intent to Continue Working in His Field

A noncitizen with extraordinary ability must "seek[] to enter the United States to continue work in the area of extraordinary ability." Section 203(b)(1)(A)(ii) of the Act. A petitioner need not have a U.S. job offer or a certification from the U.S. Department of Labor. 8 C.F.R. § 204.5(h)(4). But "the petition must be accompanied by clear evidence that the person is coming to the United States to continue work in the area of expertise." *Id.* Evidence may include:

- A letter from a prospective employer;
- Documentation of pre-arranged commitments, such as a contract; or
- A statement from a petitioner detailing their plans to continue their work in the United States.

Id.

[1] If an evidentiary criterion does not "readily apply" to a petitioner's occupation, they may submit "comparable evidence" to establish eligibility. 8 C.F.R. § 204.5(h)(4).

The Petitioner submitted a statement from himself and a business plan for the U.S. company he formed. The Director acknowledged the business plan but found that the company "does not appear to be a legitimate and established business." The Director noted that the petition lists the Petitioner's residential address in California but his company's formation in Florida. The Director stated: "You did not explain how you were and will be working for the organization in Florida, while you live in California." The Director further faulted the Petitioner for omitting evidence "that the organization was and is doing business. . . . The evidence does not establish that you have a legitimate U.S. business to continue working as a Top Executive Manager in the field of Logistics Consulting."

The Director erred by requiring the Petitioner's U.S. company to be conducting business. A petitioner may satisfy this evidentiary requirement by submitting "a statement . . . detailing plans on how he or she intends to continue his or her work in the United States." 8 C.F.R. § 204.5(h)(5). The Petitioner not only detailed his intent to open a U.S. logistics consulting company, he submitted a business plan and proof of the entity's formation. His current residence in a state other than the one in which he formed his company is insufficient to controvert his stated intent to work in the United States. *See Gulen v. Chertoff*, No. 07-2148, 2008 WL 2779001, *4 (E.D. Pa. July 16, 2008) (holding that a petitioner's statement alone met the requirements at 8 C.F.R. § 204.5(h)(5)).

The Petitioner has demonstrated his intent to continue working in his field in the United States. We will therefore withdraw the Director's contrary finding.

C. Benefit to the United States

A noncitizen with extraordinary ability must also demonstrate that their "entry into the United States will substantially benefit prospectively the United States." Section 203(b)(1)(A)(iii) of the Act. Neither the Act nor regulations define the phrase "substantially benefit." But USCIS interprets it broadly. *See Matter of Price*, 20 I&N Dec. 953, 956 (Assoc. Comm'r 1994) (holding that a professional golfer would substantially benefit the United States "[g]iven the enormous popularity of golf in this country"); *see also Buletini v. INS*, 860 F. Supp. 1222, 1229 (E.D. Mich. 1994) (assuming that the United States would benefit from any noncitizen with extraordinary ability working in the country in their field).

Contrary to the Director's finding, the Petitioner's statement and business plan establish that his U.S. work would substantially benefit the country. The business plan credibly projects that, by its fifth operating year, his company would employ 12 people and generate more than $1.2 million in annual revenue. Also, the Petitioner persuasively argues that, after the COVID 19 pandemic and its resulting supply chain disruptions, U.S. businesses need logistics consulting services.

The Petitioner has demonstrated that his proposed U.S. work would substantially benefit the country. We will therefore withdraw the Director's contrary decision.

D. Lesser Nationally or Internationally Recognized Awards

The record does not indicate – nor does the Petitioner claim – his receipt of a major internationally recognized award. He must therefore meet at least three of the ten evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i-x).

The Petitioner claims that he submitted evidence of his:

- Receipt of lesser nationally or internationally recognized awards for excellence in his field;
- Original contributions of major significance in his field; or
- Performance in a leading or critical role for organizations with distinguished reputations.

See 8 C.F.R. § 204.5(h)(3)(i), (v), (viii).

The first evidentiary criterion requires "[d]ocumentation of the [noncitizen]'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). The Petitioner's evidence must objectively meet the regulation's parameters. *See* 6 *USCIS Policy Manual* F.2(B).

When adjudicating this requirement, USCIS first determines if a petitioner – as opposed, for example, to their employer – received the prizes or awards. 6 *USCIS Policy Manual* F.(2)(B)(1), Criterion 1. Second, the Agency determines whether an award is nationally or internationally recognized and granted for excellence in the relevant field. *Id.*

The Petitioner submitted a computer printout indicating that the Kazakhstani president issued a "gold quality" diploma to the Petitioner's wholesale tea company. The diploma honors the business's status as "the best service company."

As the Director found, the diploma states the award's issuance to the Petitioner's company, rather than to him. The regulation requires "the *alien's* receipt" of awards. 8 C.F.R. § 204.5(h)(3)(i) (emphasis added); *see generally* 6 *USCIS Policy Manual* F.2(B)(1), Criterion 1.

On appeal, the Petitioner argues that the diploma recognizes not only his company but also the leadership, strategy, and management practices that led to its prize. He contends that the award demonstrates that his "strategic vision and implementation of quality management were instrumental in the company's success and the receipt of the award." He notes that USCIS policy allows "team awards" to qualify a noncitizen under this criterion.

But the diploma does not establish the Petitioner as a team award recipient. "Nothing precludes a person from relying on a team award, *provided the person is one of the recipients of the award*." 6 *USCIS Policy Manual* F.2(B)(1), Criterion 1 (emphasis added). "In general, qualifying awards include team awards where each member receives a trophy, certification, or medal; appears on the podium or stage; or is specifically named in the awarding organization's announcement of the award selection." *Id.* at n.19. The award does not state the Petitioner's name, nor does evidence indicate his mention in any award announcements or his appearance on a podium or stage. *See Hristov v. Roark*, No. 09-CV-2731, 2011 WL 4711885, *7 (E.D.N.Y. Sept. 30, 2011) (affirming our finding that, to meet this evidentiary criterion, a petitioner must be honored by name).

Also as the Director found, the Petitioner did not demonstrate the award's receipt of national or international recognition. The diploma states its issuance by Kazakhstan's president. But that, in and of itself, does not constitute national recognition. When considering recognition, we focus on "how a larger audience viewed [the] awards." *Krasniqi v. Dibbins*, 558 F. Supp. 3d 168, 182 (D.N.J. 2021)

(quoting *Visinscaia v. Beers*, 4 F. Supp. 3d 126, 136 (D.D.C. 2013)). The record lacks evidence that a national (or international) audience knew of the award's issuance.

Contrary to this evidentiary requirement, the Petitioner has not demonstrated his receipt of lesser nationally or internationally recognized awards for excellence in his field. We will therefore affirm the Director's finding regarding this criterion.

E. Remaining Issues

The Petitioner has not documented his purported receipt of lesser nationally or internationally recognized awards for excellence in his field and claims to have met only two other evidentiary criteria. Thus, he cannot meet the requisite three evidentiary requirements. We therefore need not reach and hereby reserve consideration of his appellate arguments regarding his claimed original contributions of major significance to his field and his purported performance in leading or critical roles for organizations with distinguished reputations. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (per curiam) (holding that agencies need not make "purely advisory findings" on issues unnecessary to their ultimate decisions).

III. CONCLUSION

The Petitioner has demonstrated his intent to continue working in his field in the United States and the prospective, substantial benefit to the country. But he has not met the minimum number of evidentiary criteria required for the requested immigrant visa category. We will therefore affirm the petition's denial.

ORDER: The appeal is dismissed.