U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 35873778

Date: JAN. 23, 2025

Appeal of Nebraska Service Center Decision

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

The Petitioner, a chemical engineer in the nondestructive testing (NDT) field, requests his 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 the Petitioner met one of ten initial evidentiary requirements – two less than needed for a final merits determination. On appeal, the Petitioner contends that he satisfied four additional criteria by submitting evidence of his:

- Membership in associations requiring outstanding achievements;
- Original contributions of major significance in his field;
- Performance in a leading or critical role for organizations with distinguished reputations; and
- Commandment of a high salary, or significantly high remuneration, as compared to others in his field.

8 C.F.R. § 204.5(h)(3)(ii), (v), (viii), (ix).

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 has not satisfied the requisite number of evidentiary criteria. We will therefore 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, would 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).[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 Amin v. Mayorkas,* 24 F.4th 383, 391 (5th Cir. 2022) (finding USCIS' two-step extraordinary ability analysis "consistent with the governing statute and regulation"); *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, an Egyptian native and citizen, earned a bachelor's degree in physics and chemistry and a master's degree in radiation physics from a university in his home country. Thereafter, he gained about 20 years of employment experience in NDT, techniques that evaluate the quality of materials, components, and systems without damaging them. NDT uses physical concepts like sound waves, magnetic fields, and electromagnetic radiation to detect flaws. The NDT field helps to ensure safety, reliability, and quality in many industries.

The Petitioner came to the United States in 2023. He seeks to continue his work as an NDT engineer in this country.

B. Evidentiary Criteria

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 record supports the Director's finding that the Petitioner submitted evidence that he judged others' work in his field. *See* 8 C.F.R. § 204.5(h)(3)(iv). We will next review the Director's findings regarding the other evidentiary criteria that the Petitioner claims to have met. To satisfy these other requirements, his evidence must objectively meet the parameters of the applicable regulations. *See*

[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).

Kazarian v. USCIS, 596 F.3d 1115, 1121 (9th Cir. 2010) (forbidding USCIS from "unilaterally impos[ing] novel substantive or evidentiary requirements beyond those set forth at 8 C.F.R. § 204.5"); *see generally* 6 *USCIS Policy Manual* F.(2)(B).

1. Membership in Associations

To meet this criterion, a petitioner must submit "[d]ocumentation of [their] 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 Petitioner submitted evidence that a technical society for NDT professionals awarded him its highest level of certification. Submitted information about the society indicates that its highest certification level involves: developing, qualifying, and approving NDT procedures and techniques; interpreting and reporting results; and training lower-level personnel.

The Director found insufficient evidence that the Petitioner's certification constitutes membership in the society or required outstanding achievements judged by recognized experts in their fields. On appeal, the Petitioner contends that the society's certification equates to membership and that "the certification process includes technical examinations and practical evaluations conducted by a board of experts." He states that the certification requires "continual professional development and peer review" and represents the "gold standard" in the NDT field.

The record, however, does not establish that the Petitioner's certification meets this criterion's requirements. As the Director found, the Petitioner has not demonstrated his claimed membership in the society. The society materials speak of certification, not membership. *See Goncharov v. Allen*, No. 3:21-CV-1372-B, 2022 WL 17327304, *5 (N.D. Tex. Nov. 29, 2022) (holding that "[n]o reasonable analysis" could find this criterion met without evidence of "associations which grant membership").

Also, the Petitioner's materials do not establish that the society requires outstanding achievements judged by national or international experts in their fields. The society materials state that certification requires passage of written and practical examinations and on-the-job experience. But the materials do not indicate a need for achievements judged outstanding by experts. The Petitioner submitted biographical information about members of the society's board of managers. But the information neither establishes board members' recognition as national or international experts nor indicates that they judge others' achievements. Rather, the information states that the board "provides guidance and leadership to the Society and the Certification Management Committee."

The Petitioner has not submitted documentation of his membership in associations requiring outstanding achievements as judged by experts in the field. We will therefore affirm the Director's finding regarding this evidentiary criterion.

2. Original Contributions of Major Significance

This criterion requires "[e]vidence of the [noncitizen]'s original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field." 8 C.F.R. § 204.5(h)(3)(v). When adjudicating this requirement, USCIS first determines whether a petitioner has made original contributions in their field. *See generally* 6 *USCIS Policy Manual* F.2(B)(1), Criterion 5. The Agency then considers whether the contributions have major significance in the field. *Id.*

The Petitioner provided letters from three companies that contracted his NDT services. A letter from a provider of engineering and management services states that the Petitioner's NDT expertise and leadership was "instrumental to our success." The company stated that his work extended the operational lives of client facilities, reduced maintenance costs, elevated safety standards, and ensured uninterrupted operations and efficiency. A letter from a company that rehabilitates boilers states that the Petitioner "introduce[ed] new technologies" and describes him as "one of the foremost experts" in radiation protection in Egypt. A letter from a heavy construction and engineering service provider praises the Petitioner's work on Egypt's largest oil refinery, a project that attracted more than $4 billion in foreign investment. The letter states that his work ensured the project's success and regulatory compliance.

The Director found insufficient evidence that the Petitioner's contributions were "original" and had "major significance" in his field. On appeal, he contends that his "contributions have been widely recognized by leading professionals and adopted by other organizations, influencing industry standards in nondestructive testing." He also states that "his methodologies are cited in technical papers and NDT best practices used by other engineering firms."

The record, however, does not support the Petitioner's contentions. He points to neither organizations that have adopted his techniques nor technical papers or best practices citing his methodologies. As the Director found, the Petitioner has not explained the claimed "originality" of his work or its significance to his field.

The Petitioner asserts that his contributions have affected more than his contractors and their clients. He claims that his "technical innovations, particularly in radiographic testing and phased array ultrasonic testing, have been widely implemented in critical infrastructure across Egypt and the Middle East." He also states that his claimed innovations "have had far-reaching effects across the field of NDT and industries reliant on these technologies, as demonstrated by the substantial financial impact of his work."

But the financial benefits of the Petitioner's work to his contractors and their clients does not automatically indicate its significance to his field. Other NDT professionals may perform the same type of work, saving similar amounts of money for their contractors and clients. The record lacks detailed, independent evidence of the Petitioner's claimed "technical innovations," their purported adoption by other organizations, and explanations of how they have purportedly advanced the NDT field. *See Visinscaia v. Beers*, 4 F. Supp. 3d 126, 134 (D.D.C. 2013) (discounting support letters lacking details regarding others' purported use of a petitioner's techniques).

The Petitioner has not submitted evidence of his original contributions of major significance to his field. We will therefore affirm the Director's finding regarding this evidentiary criterion.

3. Leading or Critical Role

To meet this criterion, a petitioner must submit "[e]vidence that the [noncitizen] has performed in a leading or critical role for organizations or establishments that have a distinguished reputation." 8 C.F.R. § 204.5(h)(3)(viii)

USCIS first examines whether a petitioner's role is (or was) leading or critical. *See generally* 6 *USCIS Policy Manual* F.2(B)(1), Criterion 8. A leading role means that a petitioner is (or was) a leader with an organization or an establishment, or a division or department thereof. *Id.* In contrast, a critical role involves contributions of "significant importance to the outcome of the organization or establishment's activities or those of a division or department of the organization or establishment." *Id.*

USCIS then determines whether an organization for which the petitioner holds or held a leading or critical role has a distinguished reputation. *See generally* 6 *USCIS Policy Manual* F.2(B)(1), Criterion 8. Relevant factors include not only an organization's relative size or longevity but also other circumstances, such as the scale of its customer base or relevant media coverage. *Id.*

The Petitioner primarily relies on the letters from the three companies that contracted his NDT services. The letters state that he worked in critical roles for the firms.

The Director found that, to meet this criterion, the Petitioner had to be an organization's or establishment's employee. USCIS policy states: "Evidence of experience must consist of letters from *employers*." 6 *USCIS Policy Manual* F.2(B)(1). Criterion 8 (emphasis added). As the Petitioner argues on appeal, however, the criterion's plain language does not specifically require an organization or establishment to have employed a petitioner. Rather, the criterion requires only that a petitioner have "performed" in a leading or critical role. *See Kazarian*, 596 F.3d at 1121 (forbidding USCIS from "unilaterally impos[ing] novel substantive or evidentiary requirements beyond those set forth at 8 C.F.R. § 204.5").

But, even if the Petitioner did not have to be an employee, we agree with the Director that the Petitioner's materials do not establish his claimed critical roles for the contractors. The contractors' letters lack sufficient details to show that his contributions were of "significant importance to the outcome of the organization or establishment's activities." *See* 6 *USCIS Policy Manual* F.2(B)(1), Criterion 8 (defining the term "critical role"). For example, the engineering and management services contractor stated that the value of the Petitioner's equipment and services exceeded $200 million. Also, the Petitioner stated that his clients produced about 74% of the contractor's revenues. But the contractor's letter does not indicate its total revenues or confirm their percentage purportedly produced by the Petitioner's clients. Thus, the revenue generated by the Petitioner does not demonstrate his importance to the company's overall activities. *Id.* (requiring support letters to "contain detailed and probative information that specifically addresses how the person's role for the organization, establishment, division, or department was leading or critical").

Similarly, the contractor that rehabilitates boilers stated that the Petitioner substantially reduced the amount of "shutdown time" needed for boiler maintenance and "has been instrumental in enhancing our operational efficiency." But the record lacks details about the claimed reductions in shutdown time or other improvements in the contractor's operational efficiency. Thus, the record does not indicate that the Petitioner's work was of significant importance to the company's activities.

Further, the heavy construction and engineering contractor stated that the Petitioner "played a crucial role" in the large oil refinery project in Egypt. But the record does not indicate the project's importance to the contractor's overall activities. The record therefore does not establish that the Petitioner's work was of significant importance to the company.

The Petitioner submitted a copy of an online news article stating that the heavy construction and engineering contractor generated total sales of more than $12 billion in 2023. Based on its size, we find that the company has a distinguished reputation. But we agree with the Director that the Petitioner provided insufficient details to demonstrate that his remaining contractors have distinguished reputations.

For the foregoing reasons, the Petitioner has not submitted evidence of his performance in a leading or critical role for an organization with a distinguished reputation. We will therefore affirm the Director's finding regarding this evidentiary criterion.

4. High Salary

The Petitioner has not met three of the four additional evidentiary requirements he claims to have satisfied. Thus, he cannot meet three of the criteria as required for a final merits determination. *See* 8 C.F.R. § 204.5(h)(3). We therefore will not reach and hereby reserve consideration of his appellate argument regarding his purported commandment of a high salary or other significantly high remuneration for his services. *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 not met the minimum number of evidentiary criteria required by the requested immigrant visa category. We will therefore affirm the petition's denial.

ORDER: The appeal is dismissed.