U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 35279802

Date: JAN. 28, 2025

Appeal of Nebraska Service Center Decision

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

The Petitioner, an electronics company that develops video games and manufactures gaming systems, seeks to employ the Beneficiary as an open world game design lead. The Petitioner seeks to classify the Beneficiary as an individual 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 Director of the Nebraska Service Center denied the petition, concluding that the record did not establish that the Petitioner had satisfied at least three of ten initial evidentiary criteria, as required. 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 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 immigrant visas available to individuals with 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. These individuals must seek to enter the United States to continue work in the area of extraordinary ability, and their entry into the United States will substantially benefit 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 international recognition of a person's achievements in the field through a one-time achievement in the form of a major, internationally recognized award. Or the petitioner can submit evidence 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. If those standards

do not readily apply to the individual's occupation, then the regulation at 8 C.F.R. § 204.5(h)(4) allows the submission of comparable evidence.

Once a petitioner has met the initial evidence requirements, the next step is a final merits determination, in which we 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 Beneficiary, a native of France, earned a master's degree in design in South Korea in 2004. From 2008 to 2022, the Beneficiary worked for [redacted], rising to the rank of lead design director, working on a number of video game projects including titles in the [redacted] series. Since 2022, the Petitioner has employed the Beneficiary, first as a lead level designer and then as a game design lead, in O-1 nonimmigrant status. The Petitioner states that the Beneficiary "has been responsible for leading the level design team" on a "confidential and undisclosed video game currently in development."

A. Initial Evidentiary Criteria

Because the Petitioner has not indicated or shown that the Beneficiary received a major, internationally recognized award, it must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x). The Petitioner claims to have satisfied sufficient evidence to satisfy five of these criteria, pertaining to prizes or awards; published material about the individual; original contributions of major significance; leading or critical roles for distinguished organizations or establishments; and high remuneration for services.

The Director concluded that the Petitioner's evidence met only one criterion, relating to a leading or critical role for organizations or establishments with a distinguished reputation. On appeal, the Petitioner asserts that its evidence also meets the other four claimed criteria.

Upon review of the record, we agree with the Director that the Petitioner has satisfied the criterion relating to a leading or critical role. We also conclude that the Petitioner has satisfied a second criterion relating to high salary or remuneration. We will discuss the other claimed criteria below.

1. Prizes or Awards

The regulation at 8 C.F.R. § 204.5(h)(3)(i) calls for documentation of the individual's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

The Petitioner submitted printouts from various websites, listing awards and nominations relating to a number of video games released by the Petitioner and by [redacted]. Because the regulation requires receipt of prizes or awards rather than just nominations, we will consider only actual awards.

The printouts show the titles of games on which the Beneficiary worked, but do not identify the Beneficiary as a recipient of any prize or award. The Petitioner acknowledged as much, asserting: "Because video game production is a collaborative endeavor . . . , industry awarding bodies do not typically recognize the individual game level designer."

In a request for evidence (RFE), the Director stated that "the record contains no evidence that the beneficiary was named a recipient of any award." In response, the Petitioner repeated the assertion that the video game industry issues "awards . . . to the video game project as a whole" rather than "to individual contributors."

The Director denied the petition, stating that although the Beneficiary participated in award-winning projects, the Petitioner had not shown that the Beneficiary personally received any awards as the regulation requires.

On appeal, the Petitioner acknowledges that the Beneficiary did not individually receive awards, but the Petitioner asserts that the Director relied on "a much too stringent interpretation regarding USCIS policy guidance." The Petitioner asserts that "the [USCIS] Policy Manual does not contemplate the nuances of industries in which individuals are not recognized for solo credit work."

The *USCIS Policy Manual* states: "[n]othing precludes the person from relying on a team award, provided the person is one of the recipients of the award." The language of the regulation requires "the person's receipt of the awards or prizes, as opposed to the employer's receipt of the awards or prizes." 6 *USCIS Policy Manual* F.2(B)(1), https://www.uscis.gov/policy-manual. In other words, there is no requirement that an individual be the *sole* recipient of an award, but the petitioner must demonstrate that the individual actually *received* the award.

Participation in an award-winning project is not documentation of the individual's receipt of a prize or award as the regulation requires. Such participation can receive due consideration as a leading or critical role under 8 C.F.R. § 204.5(h)(3)(viii), which the Director granted in this case, and it may have weight in a final merits determination if the case proceeds that far, but the "receipt" requirement is intrinsic to 8 C.F.R. § 204.5(h)(3)(i) and a petitioner must meet that requirement to satisfy the criterion.

Regarding the Petitioner's assertion about "industries in which individuals are not recognized for solo credit work," several awards documented in the record have named individual recipients. A printout from the National Academy of Video Game Trade Reviewers shows over a hundred individual names, and states: "Since its inception, the academy has recognized over 5,580 talented individuals." The Petitioner has not shown that the Beneficiary has been individually named in this way.

The Beneficiary worked on projects for which the "development team" won collective awards, but the Petitioner did not submit documentation directly from the awarding entities to show that he personally received awards from those entities, or was named as a recipient as part of those development teams. We further note that most of the award information in the record concerns awards for which the Beneficiary's games received nominations but not the actual awards. Of the awards that the Beneficiary's games received, most of them were not in categories that specifically mention game design.

Significantly, the Petitioner has not submitted first-hand prize documentation such as certificates from the awarding entities. Instead, the submitted evidence consists of website printouts. Because the Petitioner did not submit copies of the actual prize documentation, we cannot determine whether the prizes named individual recipients.

The Petitioner has not met its burden of proof with regard to this criterion.

2. Published Material

The regulation at 8 C.F.R. § 204.5(h)(3)(iii) calls for published material about the individual in professional or major trade publications or other major media, relating to the individual's work in the field for which classification is sought. The evidence must include the title, date, and author of the material, and any necessary translation.

The Petitioner submitted printouts of several online articles. Some of these articles identify the Beneficiary by name and title but do not otherwise mention him, while others provide more information about the Beneficiary and his work. The articles that focus the most on the Beneficiary and his work appeared in *Maldito's Nerds* and *Access the Animus* in 2015.

In the RFE, the Director stated: "the petitioner has submitted no independent, probative evidence that they are in major trade publications or other major media." The Director requested circulation data and advised that "there are no assurances about the reliability of the content from open, user-edited Internet sites such as Wikipedia, web portals, domains, blogs, social media."

In response, the Petitioner provided additional information about the publications.

In denying the petition, the Director concluded that "the evidence does not show that the posted materials were published in professional or major trade publications, or that they were reported in major media." The Director repeated the assertion that some online sources are not reliable, and the Director gave minimal weight to statistics about "web traffic." The Director also stated that "some articles are not substantially about the Beneficiary," and "some articles are not attributed to any author" as the regulation requires.

We agree with the Petitioner's assertion on appeal that the Director did not give sufficient consideration to web traffic data, but the burden remains on the Petitioner to meet all the regulatory requirements, including showing that the published material is about the Beneficiary and that it appeared in professional or major trade publications or other major media.

On appeal, the Petitioner quotes 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1):

> [T]he person and the person's work need not be the only subject of the material; published material that covers a broader topic but includes a substantial discussion of the person's work in the field and mentions the person in connection to the work may be considered material about the person relating to the person's work.

The language quoted above indicates that "the published material must include a substantial discussion of the person's work in the field." The Petitioner has submitted information to support the assertion that *Chosun Daily* and *Korea Economic Daily* are major South Korean newspapers. The submitted articles in those publications, however, did not "highlight" the Beneficiary as claimed. Rather, they listed the names and titles of individuals scheduled to speak at a 2012 conference. However, the limited information of only his name and title, and the names of video game projects, does not constitute "substantial discussion of [his] work in the field" to meet what the regulation requires.

The two submitted articles that discuss the Beneficiary and his work in depth appeared in 2015 in *Maldito's Nerds* and *Access the Animus*. The Petitioner did not provide circulation figures for either online publication. Instead, the Petitioner provided statistics about their followers on social media platforms. The Petitioner has not established the correlation between social media followers and circulation, and has not provided comparative evidence to show the numbers of the sites' social media followers are consistent with those of major trade publications or other major media.

We agree with the Petitioner that the articles need not have appeared in major "mainstream media," but the regulation specifies professional publications, major trade publications, or other major media. In evaluating whether a submitted publication is a professional publication or a major trade publication, we consider the intended audience. *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1). The language and reading level of the submitted articles appear to indicate that *Maldito's Nerds* and *Access the Animus* are aimed at a general audience of game players and enthusiasts, rather than more narrowly tailored to professionals within the industry. The focus on video games is consistent with a trade publication, but the burden is on the Petitioner to establish that the articles appeared in *major* trade publications. The record is deficient in this regard.

The Petitioner has not met its burden of proof to establish that the submitted articles meet all the regulatory requirements.

3. Original Contributions

The regulation at 8 C.F.R. § 204.5(h)(3)(v) calls for evidence of the individual's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.

The Director did not dispute the originality of the Beneficiary's contributions, but concluded that the Petitioner had not sufficiently established the major significance of those contributions. Therefore, we need not address assertions regarding the originality of those contributions.

Initially, the Petitioner asserted that the Beneficiary's "original and versatile contributions to game level design are consistently said to have elevated the standard for other professionals in [the Beneficiary's] industry as they strive to replicate his level of technical precision, realism, and artistic vision." The burden is on the Petitioner to corroborate this general claim with evidence to show who made such statements about the Beneficiary's contributions, and in what context they did so. This information is critical to show that the Beneficiary's work is of major significance to the field.

The Petitioner stated that the Beneficiary "made original contributions of major significance to the majority of the [redacted] game series" and to other games, but the regulation requires field-wide

major significance, rather than importance to specific projects. Information about the Beneficiary's importance to his employer is relevant to the separate criterion at 8 C.F.R. § 204.5(h)(3)(viii), which the Director granted. The Petitioner must show that the Beneficiary's contributions have been of major significance not only to his employers, however prominent those employers are, but also to the broader field of video game design.

The Petitioner cited "Exhibit D for additional evidence of [the Beneficiary's] contributions." Exhibit D consists of published reviews of various games. These reviews do not identify the Beneficiary, specify his contributions, or explain how they are of major significance in the field, and the Petitioner does not explain how these reviews establish the major significance of the Beneficiary's contributions. The Beneficiary's involvement in successful video game projects does not establish the major significance of his particular contributions to those projects, particularly when the Petitioner has not shown that the reviews draw attention to the Beneficiary's contributions.

The Petitioner submitted "testimonial letters from industry experts, confirming [the Beneficiary's] unique and extraordinary ability." These individuals have all worked with the Beneficiary, mostly at [redacted] Their statements do not establish that the Beneficiary's original contributions have had major significance in the field.

For example, a narrative director and lead writer at [redacted] stated that the Beneficiary "develop[ed] novel, high quality technologies that ha[ve] revolutionized the field." A former level artist at [redacted] stated that the Beneficiary's "innovative and extraordinary work . . . lays the foundation for further innovation and growth within the industry." But these individuals do not support the claimed statements and explain how the Beneficiary's work has been significant to the field, rather than to the success of individual projects.

In the RFE, the Director asked for evidence of the Beneficiary's impact on the field. In response, the Petitioner stated:

> [I]t is essential to clarify and emphasize the profound impact and significance of [the Beneficiary's] contributions to the video game industry. [The Beneficiary's] work . . . has significantly influenced the standards and practices within the industry. His involvement in developing complex and engaging open world game content and environments has played a pivotal role in shaping the narrative and gameplay dynamics that define modern gaming. . . . This influence is evident in the widespread adoption of his design principles by other game developers and in the industry's overall evolution towards more immersive and interactive gaming experiences.
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> . . . [The Beneficiary's] contributions . . . have been monumental in setting new industry standards. . . . These contributions have helped shape modern gaming conventions and have inspired a new generation of game developers to adopts similar innovative approaches in their own projects.

The Petitioner bears the burden of submitting credible evidence to substantiate its claims about the Beneficiary's influence and "the widespread adoption of his design principles by other game developers." The Petitioner's evidence does not rise to this standard.

The Petitioner's supporting evidence mostly relies on the reviews and letters submitted previously and discussed above. The Petitioner also submitted a new letter from a professor at the [redacted] who stated that the Beneficiary "has decisively enriched and advanced the field through his innovative original and significant contributions." The writer stated that this opinion is "based on the . . . testimonial letters" submitted previously. The writer discussed the nature of the Beneficiary's work on various games, but praise for the quality of the Beneficiary's work does not explain how it "advanced the field."

In the denial notice, the Director acknowledged the Beneficiary's participation in several highly successful video games and franchises. But the Director also concluded that the Petitioner had not established that the Beneficiary's work had "substantial influence beyond [his] employer."

On appeal, the Petitioner asserts that the Director misunderstood "originality in the context of the video game industry" by requiring evidence that the Beneficiary's work has been "replicated by other game level designers." The Director, however, did not call for such evidence in the denial notice. The Director stated that a petitioner can establish a contribution's major significance in different ways, one example of which was that "the beneficiary's contributions have been widely implemented throughout the field."

Also, as noted above, the Petitioner had previously claimed that the Beneficiary "significantly influenced the standards and practices within the industry," resulting in "the widespread adoption of his design principles by other game developers." The Director did not err by considering whether the record supported these claims.

The Petitioner has not met its burden of proof relating to this criterion.

For the reasons described above, we conclude that the Petitioner has not met its burden of proof to satisfy the requirements of at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3). Therefore, we need not discuss evidence outside those criteria, submitted to establish the required sustained national and international acclaim.

B. O-1 Nonimmigrant Status

We acknowledge the previous approval of an O-1 nonimmigrant visa petition on the Beneficiary's behalf. Nevertheless, the standards for O-1 status vary by field and are not identical to the standards for immigrant classification as an individual of extraordinary ability. While the Petitioner has shown that the Beneficiary has held influential positions with major video game developers, we conclude that, in this proceeding, the Petitioner has not satisfied the threshold requirements to establish that the Beneficiary qualifies for classification as a person with extraordinary ability.

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 lesser criteria. As a result, we need not 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 that it does not support a conclusion 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 individuals progressing toward the top. U.S. Citizenship and Immigration Services has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994).

The Petitioner asserts that, given the nature of the video game industry, recognition and credit are inherently collective rather than individual. The statute and regulations, however, require sustained national or international acclaim at an individual level. The Petitioner also asserts that major game makers hire only the best in their fields, and therefore the Beneficiary's very employment should be taken as evidence of extraordinary ability. A leading or critical role with a distinguished employer has weight, recognized under the individual criterion. But such employment is not sufficient evidence of sustained national or international acclaim. The record as a whole must contain "extensive documentation" of the individual's acclaim. *See* section 203(b)(1)(A) of the Act.

The Petitioner has not shown a degree of recognition of the Beneficiary's work that shows sustained national or international acclaim as required by section 203(b)(1)(A) of the Act. We will therefore dismiss the appeal.

ORDER: The appeal is dismissed.