U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 36450536

Date: JAN. 30, 2025

Appeal of Texas Service Center Decision

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

The Petitioner seeks classification as an alien of extraordinary ability in the field of traditional Uzbek metal embossing. *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 Texas Service Center Director denied the Form I-140, Immigrant Petition for Alien Workers (petition), concluding the record did not establish that the Petitioner had a major, internationally recognized award, nor did he demonstrate that he met at least three of the ten regulatory criteria. The Director further determined that the Petitioner misrepresented a material fact. 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 to U.S. Citizenship and Immigration Services by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (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.

We adopt and affirm the Director's ultimate determination. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting that the practice of adopting and affirming the decision below "is not only common practice, but universally accepted").

The Director first issued a request for evidence, then a notice of intent to deny (NOID) outlining at least five factors that led them to conclude the petitioner misrepresented a material fact. The Director raised issues within an article titled, [redacted] in the *Yoshlik* magazine. Those factors included the following:

- According to the cover of the *Yoshlik* magazine, the publication was issued in 2016;
- The header of the page contained distinct and inconsistent text appearances (e.g., the date in the upper left when compared to the text in the top right corner) making it appear the content had been altered and it did not display the entire year;

- The photograph of the Petitioner holding art did not fit in the border of the article and it cut off words located in the heading;
- The appearance of the page revealed that there may have been an original border and the article was seemingly transposed on top of it; and
- The article's translation reflected the Petitioner took first place in a 2015 competition and participated in another exhibition in Chicago in 2017, then became the owner of the relevant certificate. But it was not credible that the article published in 2016 would refer to events that occurred in 2017, more than a year after the article was published.

The Petitioner responded to the NOID by offering a letter from [redacted] the chief editor of the Republic of Uzbekistan Writers Union Youth Organization. [redacted] letter contained information relating to what appears to be a different publication than the magazine the Director questioned in the NOID. The original publication in question was named *Yoshlik* and the explanation letter from [redacted] referred to a publication by the name of *Eshlik*. The Petitioner has not established that these are the same publications, and it is his responsibility to preponderantly demonstrate his claims are true and accurate. The evidence the Petitioner provided does not align with his statements, creating a disharmony between those claims and the documentation within the record. The Petitioner must resolve this incongruity in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591–92 (BIA 1988). As it stands the letter from [redacted] will not aid the petitioner and demonstrating the evidence is probative in his favor.

In addition to those shortcomings, within [redacted] letter he did not address all of the factors that led the Director to allege the Petitioner misrepresented a material fact in the NOID. Again, it is the Petitioner's duty to provide statements and evidence that addresses all of the adverse factors or shortcomings as detailed within the NOID. And the Director denied the petition in part with a finding that the Petitioner misrepresented a material fact.

On appeal, the petitioner neither mentions nor contests the Director's allegations that he misrepresented a material fact as was outlined in both the NOID and the denial notice. Instead, the Petitioner merely offers a statement similar to his statement presented in the NOID response by identifying the [redacted] letter.

The evidence the Petitioner identifies as addressing the Director's concerns that they misrepresented a material fact is inadequate. The Director did more than simply question one element of the 2016 article in *Yoshlik* magazine, and instead they described at least five factors leading them to conclude the Petitioner misrepresented material facts. Because the Petitioner only cites to an inadequate letter from [redacted] and the foreign national here failed to address the Director's findings of misrepresentation, he has abandoned or waived that issue here. *See Matter of Zhang*, 27 I&N Dec. 569 n.2 (BIA 2019) (finding that an issue not appealed is deemed as abandoned); *Matter of Valdez*, 27 I&N Dec. 496, 496 n.1 (BIA 2018); *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012); *Matter of J-Y-C-*, 24 I&N Dec. 260, 261 n.1 (BIA 2007); *Matter of Cervantes*, 22 I&N Dec. 560, 561 n.1 (BIA 1999) *Matter of Edwards,* 20 I&N Dec. 191, 196–97 n.4 (BIA 1990).

The Director denied the petition based on two independent grounds: (1) the Petitioner did not demonstrate eligibility under at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x);

and (2) separately on a finding that the Petitioner misrepresented a material fact regarding to his evidence relating to the published material criterion at 8 C.F.R. § 204.5(h)(3)(iii). Therefore, the appellant here, must demonstrate that every stated ground for the denial was incorrect. However, the Petitioner only addresses item 1 listed above without refuting the Director's misrepresentation of a material fact finding under item 2.

As a result, even if the Petitioner overcame the issues it addresses within the appeal brief (i.e., the regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x)), he still would not demonstrate that the petition should be approved. When an appellant fails to properly challenge one of the independent grounds upon which the Director based their overall determination, the filing party has abandoned any challenge of that ground, and it follows that the Director's adverse determination will be affirmed. It is unnecessary to analyze additional grounds when another independent issue is dispositive of the appeal. *See INS v. Bagamasbad*, 429 U.S. 24, 25–26 (1976); *Green v. Attorney Gen. of U.S.*, 694 F.3d 503, 508 (3d Cir. 2012) (citing *Bagamasbad*, 429 U.S. at 25–26 for the prospect that when an overall determination requires multiple independent requirements, the failure to satisfy one requirement negates the need to address the remaining requirements as agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision).

In summary, the Petitioner has not addressed and overcome each of the dispositive elements within the Director's denial decision, and we will dismiss the appeal.

ORDER: The appeal is dismissed.