U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37293873

Date: MAR. 18, 2025

Appeal of Texas Service Center Decision

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

The Petitioner, a drilling engineer and entrepreneur, seeks classification as an alien 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 Texas 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 aliens 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. A petitioner must establish that these aliens seek to enter the United States to continue work in the area of extraordinary ability, and that their entry into the United States will substantially benefit the United States. The term "extraordinary ability" refers only to those aliens 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 an alien'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 alien'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 alien 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

In his native Russia, the Petitioner earned the equivalent a master's degree in mining engineering in 2010. The Petitioner worked in drilling equipment sales for the [redacted] office of [redacted] from 2007 to 2012, while also pursuing some training in the United States. The Petitioner worked as a general manager and drilling engineer for his own companies in [redacted] from 2012 until November 2022, when he entered the United States as a B-2 nonimmigrant visitor. In January 2023, he established a water well drilling company in Florida, and he filed the petition in March 2023.

Because the Petitioner has not claimed that he received a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x).

The Petitioner's initial submission in March 2023 included hundreds of pages of materials, but the Petitioner did not specify which of the regulatory criteria he claimed to have satisfied. The Director issued a request for evidence (RFE), asking the Petitioner to "clearly identify which criteria" he claims to meet and to explain how the evidence supports those claims. The Director listed the ten criteria at 8 C.F.R. § 204.5(h)(3) and described the types of evidence that might satisfy those criteria.

In response to the RFE, the Petitioner claimed to have met five criteria:

- (i), Lesser nationally or internationally recognized prizes or awards;
- (iii), Published material about the alien in professional or major media;
- (v), Original contributions of major significance;
- (viii), Leading or critical role for distinguished organizations or establishments; and
- (ix), High remuneration for services.

The Petitioner also stated that several recommendation letters are comparable evidence under 8 C.F.R. § 204.5(h)(4).

The Director concluded that the Petitioner had not met any of the claimed criteria, and had not established that the submitted letters are comparable evidence. On appeal, the Petitioner asserts that he meets all five previously claimed criteria. But the Petitioner does not revisit the "comparable evidence" claim. Therefore, we consider the Petitioner to have waived appeal on this issue. Any ground of ineligibility that is not raised on appeal is waived. *See Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (citing *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012)).

Upon review of the record, we agree with the Director that the Petitioner has not met the threshold criteria, as discussed below.

1. Prizes or Awards

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

The Petitioner initially stated: "In 2011, an American factory management presented me an award for the best sales of drilling equipment." He submitted a photograph of a trophy from his then-employer, inscribed: [redacted] / 2011 / Outstanding Excellence Deephole Sales / Presented to: [the Petitioner] / In recognition of your accomplishments towards the Deephole Drilling Capital equipment sales within your region."

In response to the RFE, the Petitioner's then-attorney of record stated:

> In April 2011, the Petitioner received the prestigious international award established by [redacted] for outstanding achievements in the field of drilling equipment trade.
>
> The [redacted] Marketing and Sales Award annually recognizes the most innovative successfully implemented method in the field of sales and marketing. The [redacted] website features a list of [redacted] Award winners.

The submitted printout from [redacted] website lists the winners of [redacted] Awards from 1997 to 2023. The listed winners of the 2011 award have the initials N.D., D.B., W.C., and P.L. The printout indicates that all four winners were based in Belgium, and that they won the award for "[t]he introduction of a new strategy to further increase customer satisfaction and loyalty related to compressor service." A separate press release from [redacted] also submitted with the RFE response, reads:

> The [redacted] Marketing and Sales Award will be presented to the Compressor Technique Service division, represented by [N.D., D.B., W.C., and P.L.]. The division has defined tangible key performance indicators that steer activities towards customer loyalty and highlight how everybody in the organization can contribute. Combined with increased efforts on training related to customer interaction, the division has an integrated approach that will lead to higher levels of customer satisfaction and ultimately increased revenues for [redacted]

The Petitioner's then-attorney stated:

> It should be noted that the award was presented not to [D.B.], who was the General Manager of the company in Russia at that time, but to the Petitioner. As evidence, the name of the Petitioner and the basis for receiving the award are stated in the award itself. Please refer to Attachment 37 in the original petition for the photo of the [redacted] Award.

Statements in a brief, motion, or Notice of Appeal are not evidence and thus are not entitled to any evidentiary weight. *Matter of S-M-*, 22 I&N Dec. 49, 51 (BIA 1998). In this instance, the record contradicts several of the attorney's claims. The printouts from [redacted] own website indicate that D.B. was a recipient of the 2011 [redacted] Award; it does not say that the Petitioner received the award. The same website printout places D.B. in Belgium, rather than "the General Manager of the company in Russia."

The photograph in Attachment 37 of the initial filing shows the trophy described further above. The name [redacted] does not appear on the trophy, and when he first submitted the photograph, the Petitioner did not claim that the trophy was a [redacted] Marketing and Sales Award. The inscription on the trophy refers to "Deephole Drilling Capital equipment sales," not "customer satisfaction and loyalty related to compressor service."

The RFE response includes a translated article that identifies D.B. as [redacted] general manager in Russia, but the article is dated January 2015, nearly four years after the materials that placed D.B. in Belgium in [redacted] 2011. The article discusses compressors, not deephole drilling. The article does not show that D.B. was in Russia in 2011, and it does not directly or indirectly corroborate any other aspect of the attorney's claim that the Beneficiary received the [redacted] Award.

We note that a 2023 employment verification letter from [redacted] details the Petitioner's titles and responsibilities at the company, but does not mention the [redacted] Award or indicate that he had any responsibilities relating to "compressor service." An article in a 2012 [redacted] publication, which we discuss in more detail later in this decision, states that the Petitioner "was recognized by [redacted] for his outstanding excellence in deephole sales in 2011." This characterization from the company itself is consistent with the wording on the trophy, but not with any of the information provided about the 2011 [redacted] The record does not contain any materials from [redacted] that would indicate that the award the Petitioner received in 2011 was the [redacted]

The attorney's claims regarding the Petitioner's award are incompatible with, and contradicted by, the materials from the awarding entity. We therefore give no credence to the attorney's assertions.

In the denial notice, the Director noted that the record does not show that the Petitioner work a [redacted] [redacted] Award. The Director also concluded that the Petitioner had not established the significance of the award, which appears to be limited to [redacted] employees.

On appeal, the Petitioner's current attorney of record repeats the assertions from the previous attorney's RFE response, such as the claim that "Attachment 37" contains "photographic proof" of the award. Because the record contradicts rather than supports these assertions, we need not discuss counsel's claims in any further detail.

Furthermore, because the record does not show that the Petitioner received the [redacted] Award, we need not address at length the separate question of whether the award is nationally or internationally recognized. But we will briefly state our agreement with the Director that awards limited to employees of one particular employer tend to lack wider recognition. *See generally* 6 *USCIS*

Policy Manual F.2(B)(1), https://www.uscis.gov/policy-manual. This limitation on the award's apparent recognition would also apply to the sales award that the Petitioner received in 2011, which the Petitioner has not specifically claimed as a qualifying award under 8 C.F.R. § 204.5(h)(3)(i).

The Petitioner has not met his burden of proof regarding this regulatory criterion.

2. Published Material

The regulation at 8 C.F.R. § 204.5(h)(3)(iii) calls for published material about the alien in professional or major trade publications or other major media, relating to the alien'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 a copy of a 2012 article from [redacted] about the use of [redacted] equipment in a water drilling operation in a remote part of Russia. The article identifies the Petitioner as an [redacted] salesman . . . who was recognized by [redacted] for his outstanding excellence in deephole sales in 2011." The Petitioner's name appears four times in the roughly 1,250-word article, describing how he worked with a client "to show him how [a particular drilling] rig works" and arranged for the sale of equipment for use in the project.

The Director determined that the article "briefly mentioned" the Petitioner but is not about him. The Director also concluded that the Petitioner did not establish that [redacted] is a qualifying publication because of its promotional nature.

Because we agree with the latter conclusion, we need not discuss in detail the separate question of whether the submitted article is about the Petitioner.

The Petitioner stated: [redacted] is [a] professional magazine . . . published by [redacted] for the drilling professional. The magazine focuses on the company's know-how, products and methods used for deep hole drilling and the advancement of the industry worldwide."

The Petitioner acknowledged that [redacted] is published by [redacted]. The articles submitted by the Petitioner all detail technical aspects of [redacted] products and describe their use in various projects. Promotional materials generally do not satisfy the requirements of the regulatory criterion. *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1) ("Marketing materials created for the purpose of selling the person's products or promoting the person's services are not generally considered to be published material about the person (this includes seemingly objective content about the person in major print publications that the person or the person's employer paid for)").

On appeal, the Petitioner does not address the Director's determination that [redacted] lacks weight because it is fundamentally a promotional vehicle for [redacted] Instead, the Petitioner disputes conclusions that the Director did not make. Specifically, the Petitioner cites a district court decision indicating that the Director may not discount published materials simply because they did not appear in "national media," and the Petitioner states that "the Beneficiary submitted evidence of published material in major sport-related outlets in his country of origin and beyond." The Petitioner is not an athlete and

did not claim to be the subject of articles in multiple publications in multiple countries. Therefore, the assertions in the appellate brief do not pertain to the proceeding at hand.

We agree with the Director's conclusion, undisputed on appeal, that [redacted] is more akin to a manufacturer's promotional materials than to a professional or major trade publication or other media. The Petitioner has not met his burden of proof relating to this criterion.

3. High Salary

The regulation at 8 C.F.R. § 204.5(h)(3)(ix) calls for evidence that the alien has commanded a high salary or other significantly high remuneration for services in relation to others in the field.

The Petitioner initially submitted translated copies of his personal "accounting account statement" for 2022, as well as bank and financial statements for the two companies that he founded in Russia.

In the RFE, the Director requested tax and payroll documentation of the Petitioner's salary, and survey data or other information to establish that the Petitioner's salary is high in relation to others in the field.

In response, the Petitioner stated that the previously submitted documents show that his companies generated more revenue than their competitors. The Director did not consider this evidence, because the figures provided do not pertain to the Petitioner's salary or remuneration.

On appeal, the Petitioner repeats assertions about the companies' revenue, but does not explain how these figures are relevant to the regulatory criterion, which relates to a beneficiary's remuneration, rather than the finances of the beneficiary's employer.

The Petitioner also noted that his personal account statement shows total deposits of about ₽7.58 million into his bank account in 2022. Dividing this number by 12 and citing salary survey data, the Petitioner asserted that his "average monthly salary . . . for 2022 amounted to 631,335 rubles . . . , which was 4.7 times higher [than] . . . the average salary of a Head of Direction in [redacted] which was 134,272 rubles . . . in 2022."

In the denial notice, the Director acknowledged the submitted documents, but concluded that the Petitioner had not submitted the requested documentation of the Petitioner's salary.

On appeal, the Petitioner repeats previous assertions about the financial documents he had previously submitted, and maintains: "it is reasonable to conclude that [the Petitioner's] salary, being approximately 4.7 times higher than the average, represents high remuneration in relation to others in the field.

The Petitioner, on appeal, does not address a core ground for denial. The account statement shows money deposited into the Petitioner's bank account, but does not show that the deposited funds were salary payments. This is a crucial point, because there are sources of income other than salary, and sources of deposited funds other than income. Several credits to the account are labeled "providing overdraft." The statement also refers to transfers between accounts. Any money that the Petitioner already had, but transferred from one account to another, would not count as income, salary, or remuneration.

Some of the credits to the Petitioner's account came from one of his companies. Most of these credits are labeled "payment [or partial payment] under the act of reconciliation of 2021." A ₱60,000 payment is marked "payment on the account dated 01/12/2022. For the bell, carbide bit and shoe." The information provided is not sufficient to show that these payments are salary or remuneration for services. The deposits are in varying amounts at varying intervals, rather than regularly recurring payments of any fixed salary amount.

The Petitioner has not documented his salary or remuneration. As such, he has provided no basis for comparing his own remuneration to the average figures shown in the submitted salary survey data.

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

In light of the above conclusions, the Petitioner does not meet the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3). Detailed discussion of the remaining two criteria, pertaining to original contributions and leading or critical roles, cannot change the outcome of this appeal. Therefore, we reserve these issues.[1]

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 aliens already at the top of their respective fields, rather than for aliens 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). Here, the Petitioner has not shown a degree of recognition of his work that indicates the required sustained national or international acclaim and demonstrates 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 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 and 8 C.F.R. § 204.5(h)(2). The Petitioner has documented a productive career, first with a large corporation and later with his own businesses, but the Petitioner has not established that this work has resulted in recognition beyond his own employers and clients at the high level that the classification requires.

The Petitioner has not demonstrated eligibility as an alien of extraordinary ability. We will therefore dismiss the appeal.

ORDER: The appeal is dismissed.

[1] *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach); *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).