U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 36847474

Date: MAR. 19, 2025

Appeal of Texas Service Center Decision

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

The Petitioner, a mechanical technician, 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 Petitioner did not satisfy at least three of the ten initial evidentiary criteria. The matter is now before us on appeal pursuant to 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 visas available to immigrants with extraordinary ability if:

> (i) the alien has 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,
>
> (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
>
> (iii) the alien's entry into the United States will substantially benefit prospectively 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 sustained acclaim and the recognition of his or her achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then he or she must provide sufficient qualifying documentation that meets at least three of the ten categories 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).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and 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 Petitioner currently works as a certified diagnostics technician for [redacted] in Florida and intends to establish a business for which he would work as a mechanical technician with a focus on luxury cars. He is seeking to be classified as an alien of extraordinary ability based on his work as a mechanical technician in the field of luxury car mechanics.

Because the Petitioner has not indicated or established that he has received a major, internationally recognized award, the issue to be addressed on appeal is whether the Petitioner satisfied at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Director determined that the Petitioner did not meet any of the four claimed evidentiary criteria:

- memberships in associations requiring outstanding achievements,
- original contributions of major significance,
- leading or critical roles in organizations or establishments with distinguished reputations, or
- high salary or other remuneration.

On appeal, the Petitioner maintains he qualifies for three criteria. He does not mention or provide a claim for the criterion related to high salary or other remuneration, and therefore, waives claim to this criterion. 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 de novo review, the Petitioner has not demonstrated he meets at least three of the initial evidentiary criteria.

For the criterion of memberships in associations requiring outstanding achievements at 8 C.F.R. § 204.5(h)(3)(ii), the Petitioner must establish his membership in associations in his field, which require outstanding achievements of their members, as judged by recognized national or international experts

in their disciplines or fields. The Petitioner has not established meeting the requirements for this criterion.

The Petitioner contends he meets this criterion based on his membership in two associations. First, he submitted a certificate of excellence issued by [redacted] for his qualification as a diagnostic technician. He maintains the certificate of excellence shows that he is a member of [redacted] with qualifications to work at any [redacted] factory throughout the world. He also submitted a list of several additional [redacted] technical certifications awarded to him after he successfully completed courses, including engine diagnosis and repair, electric and hydraulic systems, gearbox, lighting, car clutch, electronic systems, brake systems, and safety.

While the certificate of excellence has the words "certificate of excellence" in English, the remainder of the document is in a foreign language. Any document in a foreign language must be accompanied by a full English language translation. 8 C.F.R. § 103.2(b)(3). The translator must certify that the English language translation is complete and accurate, and that they are competent to translate from the foreign language into English. Id. Because the Petitioner did not submit a properly certified English language translation of the certificate of excellence as required, we accord it no weight as we cannot meaningfully determine whether the document supports his claims for this criterion.

Had the Petitioner submitted the required foreign language document with the English translation, the certificate of excellence and the list of additional course completions would nevertheless be insufficient to meet the criterion. The Petitioner's completion of training courses for his employment do not show that he is a member of an association in his field, or that his completing such courses requires outstanding achievements of the members, as judged by recognized national or international experts in their field.

For the second membership, the Petitioner submitted documentation to show that he is a member and active participant of [redacted] specifically providing a declaration from [redacted] articles for the organization of [redacted] dated 2020; and [redacted] website printouts of photographs and a short description of [redacted] stating it is "a select group of automotive repair technicians, specialists in premium, sports, hybrid, electric and also high-end vehicles, known as exotics."

The declaration from [redacted] is dated May 10, 2024, and states the Petitioner is an active member of the association. However, the declaration does not indicate when the Petitioner became a member of [redacted] We note the declaration was issued almost a year after the filing of the petition in May 2023. The record lacks other evidence demonstrating that the Petitioner was a member of [redacted] at the time of filing. See 8 C.F.R. § 103.2(b)(1); see also Matter of Katigbak, 14 I&N Dec. 45, 49 (Comm'r 1971) (finding that a petitioner must establish eligibility at the time of filing, and consequently, a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts).

For the articles of organization of [redacted] the Petitioner did not submit a full English translation of the document or the required certification of the English translation. See 8 C.F.R. § 103.2(b)(3). Moreover, the uncertified translation accompanying the document contains numerous errors and is often incomprehensible. As the Petitioner has not submitted a properly certified full English

translation as required by 8 CFR 103.2(b)(3), the record fails to establish whether [redacted] meets the requirements for this criterion.

For the reasons discussed above, the Petitioner did not demonstrate he meets the criterion of memberships in associations requiring outstanding achievements at 8 C.F.R. § 204.5(h)(3)(ii).

The Petitioner asserts that he meets eligibility for two additional criteria relating to original contributions of major significance at 8 C.F.R. § 204.5(h)(3)(v) and leading or critical roles at 8 C.F.R. § 204.5(h)(3)(viii). Because the Petitioner cannot fulfill the initial evidentiary requirement of three under criteria under 8 C.F.R. § 204.5(h)(3), we need not determine whether he meets the requirements of these two additional criteria, nor do we need to provide the type of final merits determination referenced in Kazarian, 596 F.3d at 1119-20. Accordingly, we will reserve these issues. See INS v. Bagamasbad, 429 U.S. 24, 25 (1976) (per curiam) (holding that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision). Nevertheless, we advise that we have reviewed the record in the aggregate, concluding that it does not support a finding that the Petitioner has established the acclaim and recognition required for the classification sought.

III. CONCLUSION

The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than those progressing toward the top. Matter of Price, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994) (concluding that even major league level athletes do not automatically meet the statutory standards for classification as an individual of "extraordinary ability,"); Visinscaia, 4 F. Supp. 3d at 131 (internal quotation marks omitted) (finding that the extraordinary ability designation is "extremely restrictive by design"); Hamal v. Dep*'t of Homeland Sec. (Hamal II)*, No. 19-cv-2534, 2021 WL 2338316, at *5 (D.D.C. June 8, 2021), *aff'd*, 2023 WL 1156801 (D.C. Cir. Jan. 31, 2023) (determining that EB-1 visas are "reserved for a very small percentage of prospective immigrants"); s*ee also Hamal v. Dep't of Homeland Sec. (Hamal I)*, No. 19-cv-2534, 2020 WL 2934954, at *1 (D.D.C. June 3, 2020) (citing Kazarian, 596 at 1122 (upholding denial of petition of a published theoretical physicist specializing in non-Einsteinian theories of gravitation) (stating that "[c]ourts have found that even highly accomplished individuals fail to win this designation")); Lee v. Ziglar, 237 F. Supp. 2d 914, 918 (N.D. 2002) (finding that "arguably one of the most famous baseball players in Korean history" did not qualify for visa as a baseball coach).

Here, the Petitioner has not shown the significance of his work is indicative of the required sustained national or international acclaim or it is consistent with 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 the Petitioner has garnered national or international acclaim in the field, and he 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 record does not contain sufficient evidence establishing the Petitioner among the upper echelon in his field.

For the reasons discussed above, the Petitioner has not demonstrated his eligibility as an alien of extraordinary ability. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.