U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 35285368

Date: MAR. 31, 2025

Appeal of Texas Service Center Decision

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

The Petitioner is a Brazilian Jiu-Jitsu competitor who 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 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 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 (USCIS) 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").

We also note a procedural aspect that would negatively affect the Petitioner's appeal even if we were not adopting and affirming the Director's decision. The Director issued a request for evidence (RFE) acknowledging the Petitioner's claims relating to a one-time achievement, but noted the record lacked adequate objective evidence and they presented several elements any additional evidence must demonstrate. The Director also clearly indicated he did not establish he had received a one-time achievement when they stated: "As such, the submitted evidence does not meet the requirements of 8 C.F.R. Section 204.5(h)(3)." Yet, in the RFE response, the Petitioner ignored the Director's analysis, incorrectly stated the Director found in his favor relating to a one-time achievement, then elected to provide no response to the Director's request for additional evidence and arguments pertaining to a one-time achievement or to any of the regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x).

Instead, the Petitioner's RFE response only addressed how his accomplishments will substantially benefit prospectively the United States (*see* section 203(b)(1)(iii) of the Act), and that he will continue work in his area of expertise in the United States (*see* section 203(b)(1)(A)(ii)). In doing so, the Petitioner effectively abandoned his claims relating to a one-time achievement and his claim relating to the regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x) during any proceeding stemming from this petition.

But on appeal, the Petitioner now reasserts his eligibility under the one-time achievement and several of the regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x). Below we explain why this is not permitted.

The regulation states that the Petitioner shall submit additional evidence as the Director, in their discretion, may deem necessary. The purpose of such a request is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. § 103.2(b)(8), (12). *See also Matter of C-A-R-R-*, 29 I&N Dec. 13, 17 (BIA 2025) (relying on Executive Office for Immigration Review regulatory provisions that, while they are not identical to USCIS regulations, effectively contain the same types of mandates).[1] The regulation provides that a party who fails to respond to an RFE or a notice of intent to deny has abandoned or waived their claims outlined in the USCIS notice. 8 C.F.R. § 103.2(b)(13)(i). Further, the failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition, as that party has abandoned or waived any such claims. 8 C.F.R. § 103.2(b)(14).

Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency but failed to do so, they cannot revive that claim on appeal. *See Matter of R-S-H-*, 23 I&N Dec. 629, 638 (BIA 2003) (explaining that when faced with an adverse scenario, such as the Director outlining an evidentiary shortcoming within an RFE, a filing party must then advance their arguments in response to the request in order to preserve them on appeal). In other words, we will not permit a filing party to now advance their arguments that they failed to present in response to the Director's request. If the Petitioner had wanted these arguments to be considered, he/she should have submitted them in response to the Director's RFE. *Id.* Accordingly, the arguments now presented on appeal are procedurally barred as they should have been submitted in response to the Director's RFE.

Even if that were not the case, after a cursory review of the Petitioner's appellate claims we do not find his arguments associated with a one-time achievement to be persuasive, nor does it appear that he would satisfy one additional regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i)–(x). But it is unnecessary that we address those issues in detail here.

Additionally, 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 criteria. As a result, we do not need to 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 it does not support a finding that the Petitioner has established the acclaim and recognition required for the classification sought.

[1] The *C-A-R-R-* decision provides that when the trier of fact requests supplemental documents it deems necessary to complete an adjudication, but those materials are not timely submitted, the opportunity to file those documents is waived.

The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for those progressing toward that goal. USCIS 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 the significance of their work is indicative of the required sustained national or international acclaim or that 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). Moreover, the record does not otherwise demonstrate that the Petitioner has garnered national or international acclaim in the field, and they are one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) and 8 C.F.R. § 204.5(h)(2).

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.