U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37190427

Date: MAY. 05, 2025

Appeal of Service Center Operations Decision

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

The Petitioner seeks classification 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 in the sciences, arts, education, business, or athletics through sustained national or international acclaim, and whose achievements have been recognized in their field through extensive documentation. Section 203(b)(1)(A)(i) of the Act.

Service Center Operations (SCOPS) denied the petition, concluding that the record did not establish that the Petitioner is the recipient of a major, internationally recognized award, nor did he meet at least three of the ten initial evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.

The Petitioner bears the burden of demonstrating eligibility for the requested benefit 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

To qualify as an alien with extraordinary ability, a petitioner must:

- Have "extraordinary ability in the sciences, arts, education, business, or athletics," which has been demonstrated by sustained national or international acclaim;
- Seek to continue work in their field of expertise in the United States; and
- Through their work, substantially benefit the country prospectively.

Section 203(b)(1)(A)(i)-(iii) of the Act. The term "extraordinary ability" means expertise commensurate with 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 of the evidence to determine whether a petitioner has sustained national or international acclaim and whether their achievements have been recognized in the field. First, a petitioner can provide evidence of either "a major, international recognized award," or satisfaction of at least three of ten lesser evidentiary criteria at 8 C.F.R. § 204.5(h)(3).[1] Then, if a petitioner meets the initial evidence requirements, USCIS must conduct a final merits determination to assess whether the record—as a whole—shows a petitioner's sustained national or international acclaim and demonstrates that the petitioner is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115, 1121 (9th Cir. 2010) (discussing a two-step 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); *see generally* 6 *USCIS Policy Manual* F.2(B), www.uscis.gov/policy-manual.

II. ANALYSIS

Because the Petitioner did not indicate or establish that he has 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 claimed to meet four of the ten evidentiary criteria:

- (i) receipt of lesser nationally or internationally recognized awards for excellence in the field;
- (v) original scientific, scholarly, artistic, athletic, or business-related contributions of major significance to the field;
- (vii) display of work in the field at artistic exhibitions or showcases; and
- (viii) leading or critical role for organizations that have a distinguished reputation.

SCOPS concluded that the Petitioner did not satisfy any of the claimed criteria. Moreover, it determined that the Petitioner did not establish he was coming to the United States to continue working in his field or that his entry would substantially benefit the United States. On appeal, the Petitioner continues to assert satisfaction of the initial four criteria[2], and claims SCOPS erred in evaluating the evidence, imposing novel substantive and evidentiary requirements beyond those set forth in the regulations.

Upon de novo review, we agree that the Petitioner has not established eligibility under any of the criteria claimed.

> *Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.* 8 C.F.R. § 204.5(h)(3)(i).

The plain language of this criterion requires a petitioner to establish: (1) the alien is the recipient of the prizes or awards; (2) those accolades are nationally or internationally recognized; and (3) the prize or award is for excellence in the field of endeavor.

[1] If an evidentiary criterion does not "readily apply" to a petitioner's occupation, they may submit "comparable evidence" to establish eligibility. 8 C.F.R. § 204.5(h)(4).

[2] The Petitioner does not claim to submit "comparable evidence" under 8 C.F.R. § 204.5(h)(4) to satisfy any additional criteria

To satisfy this criterion, the Petitioner submitted a screenshot from [redacted] discussing his company's bridal makeup services and stating that the company is "made up of experienced professionals with the know-how to provide high level services." In addition, he provided an article indicating that [redacted] "is the leading marriage portal present in 23 countries." He also submitted screenshots of his company's Instagram account highlighting complimentary comments from an established makeup and beauty content creator. Beyond providing a coversheet to this documentation indicating it relates to this criterion, the Petitioner did not explain how this documentation established his eligibility under this criterion.

SCOPS concluded that the Petitioner had not shown how this evidence established he was the recipient of a lesser nationally recognized prize or award. On appeal, the Petitioner disagrees with SCOPS, and states that the evidence establishes his eligibility under this criterion. Notably, however, the Petitioner does not explain the relevance of this evidence or identify how it establishes he is the recipient of a lesser nationally or internationally recognized award. Nevertheless, we have reviewed the record and agree that the evidence does not establish the Petitioner is the recipient of a lesser nationally or internationally recognized prize or award.

Because the Petitioner has not established that he is the recipient of a lesser nationally or internationally recognized prize or award, he has not shown that he satisfies the plain language of this criterion.

> *Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.* 8 C.F.R. § 204.5(h)(3)(v).

The plain language of this criterion requires the Petitioner to establish that he has not only made original contributions in his field, but that they have been of major significance. For example, he may show that his contributions have been widely implemented throughout the field, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance. *See Visinscaia*, 4 F. Supp. 3d at 134-35.

On appeal, the Petitioner claims to have satisfied this criterion due to his introduction of an "innovative product that did not previously exist in the market." Specifically, he claims to have introduced a stamp crease tool used to apply eyeshadow. In support of this claim, the Petitioner provided photographs of the stamp crease and its packaging, as well as screenshots of his company's Instagram account postings, which includes a repost of a [redacted] post discussing the eyeshadow stamp, indicating that the product is "patented and trademarked" by the Petitioner. In addition, he submitted a copy of a 2018 invoice and authorization letter, indicating his company requested the production of 3,500 stamp creases, and authorized the manufacturer to utilize his company's trademark on the packaging. He also submitted copies of his company's franchise offering materials, and a patent application for a disinfection device for gym mats, without explaining its relevance to his company's operations or his claimed contribution of the stamp crease.

Upon review we agree with SCOPS' determination that the Petitioner did not sufficiently establish that he made original contributions to his field of major significance.

First, beyond a screenshot of an Instagram post, the Petitioner has not provided evidence to corroborate his invention of the stamp crease product, or that he has secured a patent for this product, nor are we able to determine the basis for the post's claim that the product is patented to evaluate its probative value. Moreover, while the screenshots of his company's social media account establish that the product has been advertised and received comments from interested customers, contrary to the Petitioner's assertions on appeal, he has not shown that the product has achieved "broad impact and utility" or otherwise is considered a significant contribution to the field. Similarly, while the Petitioner asserts that the invoice for the manufacturing of 3,500 stamp creases establishes its impact to the field, we disagree; this evidence only establishes the Petitioner entered into an agreement to manufacture the product in 2018, it does not indicate whether these items were purchased or adopted by in the industry more widely. Further, even if all of the items were purchased, the Petitioner has not provided any evidence to show the impact of the sale of 3,500 units such that it would establish it was of major significance.

A petitioner must support assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 376. The Petitioner cannot rely on conclusory statements to satisfy their burden. *See e.g., 1756, Inc. v. U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990) (holding that an agency need not credit conclusory assertions in immigration benefits adjudications). Here, without more, we cannot conclude that the Petitioner has met his burden to establish eligibility under this criterion.

> *Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.* 8 C.F.R. § 204.5(h)(3)(vii).

To satisfy this criterion, a petitioner must first establish that the displayed material constitutes their work product, and that the work was displayed at an artistic exhibition or showcase. *See generally* 6 *USCIS Policy Manual, supra*, at F.2(B). The modifier of "artistic" in the regulatory language means that to satisfy this criterion, a petitioner must establish that the exhibitions or showcases which displayed his work were artistic in nature. *Id.*

On appeal, the Petitioner asserts that he satisfies this criterion based on the evidence of Instagram postings and articles showing his company's products and work. Asserting that his work "has been made available to a broad audience through these channels" and that "[s]ocial media platforms are widely recognized as contemporary showcases that allow artists and professionals to reach large audiences," he contends that his social media posts display his work "in a manner consistent with an exhibition." We disagree.

First, the Petitioner has not shown how photographs and promotional materials of his product posted and shared on his company's social media accounts constitute a display of his work, rather than self-published, promotional material. *See Kazarian v. USCIS*, 596 F.3d 1115, 1122 (finding that self-publishing a textbook, lecturing at a community college, and presenting at conferences were not displays at artistic exhibitions or showcases consistent with the relevant regulatory language). Moreover, accepting the Petitioner's interpretation that any display of his work that is made available to the public would satisfy this criterion would render the requirement that the display occur at an "artistic exhibition or showcase" meaningless. While artists may use social media forums like

Instagram to promote their art, the Petitioner has not sufficiently shown that this constitutes an artistic showcase as contemplated by the regulation. *See generally* 6 *USCIS Policy Manual, supra*, at F.2(B).

Similarly, while we acknowledge the submission of articles discussing the use of his company's product, and additional screenshots of videos depicting individuals using his product, we are not persuaded by the Petitioner's contention on appeal that, because "the article in question presented [his] work to a professional audience, which aligns with the definition of a 'showcase,'" he has satisfied this criterion. The Petitioner has not explained why these articles and postings should be considered *artistic* showcases. As stated, it is the Petitioner's burden to establish eligibility for each criterion. Without more, we cannot conclude that the Petitioner satisfies this criterion.

> *Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.* 8 C.F.R. § 204.5(h)(3)(viii).

In order to meet this criterion, the Petitioner must establish that he not only played a leading or critical role, but also that the organization or establishment for which he played that role is recognized as having a distinguished reputation. Organizations or establishments that enjoy a distinguished reputation are "marked by eminence, distinction, or excellence." *See generally 6 USCIS Policy Manual*, *supra*, B.1 (citing to the definition of *distinguished*, *Merriam-Webster*, https://www.merriamwebster.com/ dictionary/distinguished).

The record contains various pieces of evidence establishing the Petitioner's professional background and the operations of his company, including his resume, various business registration documents, as well as social media postings discussing his company's product. Upon review, SCOPS concluded that the Petitioner did not satisfy this criterion because the record did not contain evidence establishing that his company held a distinguished reputation.

On appeal, the Petitioner disagrees with SCOPS' conclusion and asserts that it did not properly review the evidence, which he claims shows "he has been the recipient of nationally and internationally recognized prizes and awards for excellence in the field of her [sic] endeavor." First, regarding the Petitioner's claim that he satisfies this criterion based on receipt of awards, we have already considered and dismissed those assertions under the first criterion. Moreover, the Petitioner has not addressed SCOPS' conclusion that the evidence does not establish that his company has garnered a distinguished reputation.

Nonetheless, upon de novo review, we agree with SCOPS that the record does not establish the distinguished reputation of the Petitioner's company. The business records and sale documents in the record establish the company is operational, but do not indicate the company has a distinguished reputation. And, while we acknowledge that the record contains evidence corroborating some individual interest in the Petitioner's product, and its bridal makeup services, he has not explained how this evidence sufficiently demonstrates that the company is marked by eminence, distinction, or excellence.

Accordingly, we cannot conclude that the Petitioner meets this criterion.

III. CONCLUSION

The Petitioner has not submitted the required initial evidence of either a one-time achievement of a "major, international recognized award," or evidence that meets at least three of the ten criteria at 8 C.F.R. § 204.5(h)(3). As a result, we do not need to provide the type of final merits determination discussed in *Kazarian*, 596 F.3d at 1119-20. Nevertheless, we advise that we have reviewed the record in the aggregate and conclude that it does not demonstrate 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 that goal. *See Matter of Price*, 20 I&N Dec. at 954 (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) (determining that EB-1 visas are "reserved for a very small percentage of prospective immigrants"); *see 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")).

Here, the Petitioner has not shown that the significance of his work is indicative of the required sustained national or international acclaim or that it is otherwise 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 that the Petitioner has garnered national or international acclaim in the field, and that 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).

ORDER: The appeal is dismissed.