U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37780900

Date: MAY 6, 2025

Appeal of Service Center Operations Decision

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

The Petitioner who intends to work as a health management specialist 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 (EB-1) classification makes immigrant visas available to aliens who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their fields through extensive documentation.

Service Center Operations (SCOPS) denied the petition, concluding that the record did not establish that the Petitioner had satisfied at least three of ten initial evidentiary criteria. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3. On appeal, the Petitioner contends that SCOPS has imposed novel substantive and evidentiary requirements beyond those set forth in the regulations, misapplied the law, and failed to properly evaluate the evidence submitted under the preponderance of the evidence standard. She maintains that she meets at least three of the regulatory criteria and that the record demonstrates sustained acclaim and recognition that places her among the small percentage of individuals at the pinnacle of her profession.

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) of the Act makes visas available to aliens 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). *See also Onaghise v. Dep't of Homeland Sec.*, No. 3:20-CV-03033-X, 2022 WL 4073344, at *2 (N.D. Tex. Sept. 2, 2022) ("EB-1 petitions, nicknamed Einstein visas, are coveted visas reserved for only the most talented noncitizens with extraordinary ability in the sciences, arts, education, business, or athletics"). 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 the beneficiary's 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 they 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). Additionally, if the criteria at 8 C.F.R. § 204.5(h)(3) do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence to establish the beneficiary's eligibility. 8 C.F.R. § 204.5(h)(4).

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 beneficiary 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

A. Evidentiary Criteria

Because the Petitioner has not indicated or established that she has received a major, internationally recognized award, she must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x). SCOPS decided that the Petitioner met one of the three claimed criteria relating to scholarly articles but did not satisfy the remaining criteria relating to membership in associations and a leading or critical role. After reviewing all the evidence in the record, we conclude that the Petitioner has not demonstrated eligibility for this highly restrictive immigrant classification for the reasons we will discuss below. While we may not address each piece of evidence individually, we have reviewed and considered each one.

1. "Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields." 8 C.F.R. § 204.5(h)(3)(ii).

In order to satisfy this criterion, the Petitioner must show that the association for which she claims present or past membership requires that members have outstanding achievements in the field, as judged by recognized experts in that field. *See generally* 6 *USCIS Policy Manual* F.2(B)(1),

https://www.uscis.gov/policy-manual. Example of associations in the field requiring outstanding achievements of their members may include a membership in certain professional association and a fellow with certain organizations or institutions. *Id.*

Associations may have multiple levels of membership, and the level of membership afforded to the person must show that in order to obtain that level of membership, recognized national or international experts judged the person as having attained outstanding achievements in the field for which classification is sought. *Id.* Relevant factors that may lead to a conclusion that the person's membership in the association was not based on outstanding achievements in the field include instances where the person's membership was based solely on (1) a level of education or years of experience in a particular field, (2) the payment of a fee or by subscribing to an association's publications, and (3) a requirement for employment in certain occupations, such as union membership or guild affiliation for actors. *Id.*

The Petitioner claims that her membership with the [redacted] fulfills this criterion. She asserts that this affiliation highlights her expertise and leadership in the field and significant impact within the industry. The record contains a statement of discharge of annuity from the [redacted] dated 2023, which states that the Petitioner is a member of the association, and her 2024 annual fee has been paid. While this document establishes that the Petitioner was a member of the [redacted], the Petitioner did not submit sufficient documentary evidence reflecting that her membership with the association requires outstanding achievements of its members, as judged by recognized national or international experts in their fields. *See* 8 C.F.R. § 204.5(h)(3)(ii).

The Petitioner submitted the statute of the [redacted], which provide its nature, purposes, organization, members, administration, committees, elections, funding sources, and other general provisions. Article 10 of the statute states that its members belong to effective members, honorary members, or special members. Article 11 provides that nurses and midwives who are covered by the current legislation in Brazil, admitted to the Districts, and in good standing with the Treasury are effective members. Articles 12 and 13 state that honorary members are those who have donated goods or provided services to the association or those who have contributed to the cause of national nursing. Article 14 provides that special members are students in the last two periods of the undergraduate course in nursing and obstetrics who have their admission proposals approved by the Board of Directors of the District where the school is located.

The statute of the [redacted] does not establish that membership with the association requires outstanding achievements of its members and that recognized national or international experts judged the Petitioner as having attained outstanding achievements in the field of nursing to admit her as a member. Rather, the statute indicates that a person's membership in the association is based on professional qualifications, a level of education, the payment of a fee, the donation of goods or services to the association, or the contribution to the cause of nursing. Submitting documentary evidence reflecting membership status is insufficient to meet the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii) without documentary evidence demonstrating that the beneficiary is a member of associations requiring outstanding achievements of their members, as judged by recognized national or international experts in their fields. As the Petitioner has not

established that the association requires outstanding achievements for its members, the Petitioner did not demonstrate that she fulfills this criterion.

2. "Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media." 8 C.F.R. § 204.5(h)(3)(vi).

In order to fulfill this criterion, the Petitioner must first demonstrate that she has authored scholarly articles in the field of endeavor. *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1). As defined in the academic area, a scholarly article reports on original research, experimentation, or philosophical discourse, and it is written by a researcher or expert in the field who is often affiliated with a college, university, or research institution. *Id.* Scholarly articles are also generally peer reviewed by other experts in the field of specialization. In general, it should have footnotes, endnotes, or a bibliography and may include graphs, charts, videos, or pictures as illustrations of the concepts expressed in the article. For other fields, a scholarly article should be written for learned persons in the field. *Id.* "Learned" is defined as "having or displaying advanced knowledge or education." *Learned*, Meriam-Webster.com, www.merriam-webster.com. Learned persons include all persons having profound knowledge of a field. *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1).

Second, we determine whether the publication qualifies as a professional publication, major trade publication, or major media publication. *Id.* In evaluating whether a submitted publication is a professional publication or major media, relevant factors include the intended audience (for professional journals) and the circulation or readership relative to other media in the field (for major media). *Id.*

SCOPS determined that the Petitioner established eligibility for this criterion, and we agree. The documentary evidence submitted by the Petitioner reflects that she has co-authored a scholarly article titled, "[redacted]," published in a professional publication, *Ciencia et Praxis*. Accordingly, the Petitioner meets this criterion.

3. We Reserve the Remaining Claimed Criterion

We conclude that although the Petitioner claims she meets an additional criterion relating to a leading or critical role, because her arguments fail on the criterion relating to membership in associations as discussed above, that means she cannot numerically meet the required number of at least three criteria. It is, therefore, unnecessary for us to decide on this additional ground because she cannot numerically meet the required number of criteria. As the Petitioner cannot fulfill the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3), we reserve this issue. *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).

B. Final Merits Determination

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.

III. CONCLUSION

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. 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 the significance of her 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) of the Act. Moreover, the record does not otherwise demonstrate that the Petitioner has garnered national or international acclaim in the field, and she 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; 8 C.F.R. § 204.5(h)(2).

For the reasons we have discussed above, the Petitioner has not demonstrated her 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.