U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 15776474

Date: MAY 7, 2021

Appeal of Nebraska Service Center Decision

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

The Petitioner, a lawyer, 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 through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska 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.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 203(b)(1)(A) of the Act makes immigrant visas available to individuals 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 international 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 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).

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 earned his law degree in 2007. After serving in various government positions, he co-founded a law firm in [redacted] A biographical sketch in the record indicates that "he has been working as a consultant for the Federal Public Service for Home Affairs [redacted], and the General Directorate Aliens' Office [redacted]." The Petitioner has provided legal services for local offices of [redacted] and [redacted] in [redacted], as well as [redacted]'s Agency for Youth and Sport. The Petitioner entered the United States as an F-1 nonimmigrant student in 2018, studying for a Master of Law degree at [redacted] College of Law. He established a law firm in [redacted] in [redacted] 2020, and now practices [redacted] law. His firm filed a nonimmigrant petition on the Petitioner's behalf in August 2020, five months after the filing of the present immigrant petition. The approval of that petition in November 2020, while the present appeal was pending, granted the Beneficiary status as an O-1 nonimmigrant with extraordinary ability.[1]

The Petitioner claims to have received a major, internationally recognized award from [redacted] a business and legal news website headquartered in the [redacted] presented the Petitioner with a Legal 2015 Award for [redacted]. The "About Our Awards" page on the entity's website claims: [redacted] Awards represent the pinnacle of business achievement, championing the best in their respective fields." [redacted]s own promotional materials do not establish that the awards are internationally recognized.

[1] The record before us does not provide further information about the approval of the nonimmigrant petition, or show whether that approval relied on the same evidence now before us. We are not required to approve applications or petitions where eligibility has not been demonstrated, merely because of possibly erroneous approvals in separate proceedings. *See Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 597 (Comm'r 1988). Furthermore, our authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the petitioner, we would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 44 F. Supp. 2d 800, 803 (E.D. La. 1999).

The Petitioner states that winners are selected through a global survey, and that the awarding entity has prestigious international partners including well-known law firms and the American Bar Association. The Petitioner asserts, therefore, that the award is comparable to a "Noble [*sic*] Prize." The entity's own website describes a two-step award process: "the first step is to receive a nomination through our entry form below. The nomination will then be assessed by the [redacted] team." The website lists various "media partnerships" but there is no indication that the partner entities have any input into the selection of award winners. Rather, the partners appear to be sponsors of the website. The record does not show who nominated the Petitioner for the award or how many others were nominated for the same award in 2015.

[redacted] announced the award winners in its own publication, but the Petitioner has not submitted evidence to establish recognition of the [redacted] Awards outside of the awarding entity itself. The record does not support the Petitioner's claim that the [redacted] Awards have a level of recognition comparable to the Nobel Prize.

The Petitioner also claims to satisfy five of the regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x):

- (i), Lesser nationally or internationally recognized prizes or awards;
- (ii), Membership in associations that require outstanding achievements;
- (iii), Published material about the individual in professional or major media;
- (vi), Authorship of scholarly articles; and
- (viii), Leading or critical role for distinguished organizations or establishments.

The Director concluded that the Petitioner met one criterion, relating to authorship of scholarly articles. On appeal, the Petitioner asserts that he also meets the other four claimed criteria.

Upon review of the record, we agree with the Director that the Petitioner has satisfied only one of the regulatory criteria. We will discuss the other claimed criteria below.

> *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 Petitioner asserts that, because the Director did not consider the [redacted] Award to be a major, internationally recognized award, the Director should have considered the award under this criterion. The Petitioner, however, has not submitted any information about this award except for promotional materials from the awarding entity. Such materials, by their nature, cannot establish outside recognition of the awards.

Certificates show that the Petitioner won three [redacted] Awards from the [redacted]. A web printout in the record states: "The [redacted] Award® is given to the highest scoring student in each law school class at many law schools. . . . About half of our 200 member law schools distribute [redacted] Awards." [redacted] may be a national organization, but the pool of potential winners for any particular [redacted] Award is limited to the students in one class at one school (for example, '[redacted]' at [redacted] College of Law). The Petitioner has not shown that these individual awards are nationally or internationally recognized.

The Petitioner also cites two recommendation letters as qualifying prizes or awards. An education specialist at [redacted]'s office in [redacted] states that the Petitioner provided legal services connected to certain law and policy initiatives. The executive director of [redacted] calls the Petitioner "one of the finest legal consultants we have ever had." Neither letter indicates that the Petitioner received any prize or award for his work, and the letters themselves are not prizes or awards; there is no indication that the issuance of these two reference letters received national or international recognition. Rather, these are employment recommendation reference letters, intended for submission to prospective employers. The [redacted] letter states: "I would highly recommend [the Petitioner] for any professional endeavor"; the [redacted] letter states that the Petitioner "will be a valuable addition to any company" and "an extremely positive asset to your organization." These letters enthusiastically recommend the Petitioner to prospective employers, but they are not prizes or awards, nor do they indicate that the Petitioner won prizes or awards for the work described.

The Petitioner has not satisfied the requirements of this criterion.

> *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)*

A letter from the [redacted] Bar Association [redacted] indicates that the Petitioner "has been a delegate to the Assembly of the [redacted] Bar Association with a mandate period from 2014-2018 and 2018-2022 as a delegate from the Law Community [redacted] 4." The Petitioner asserts that his status as a delegate is a qualifying membership, because "the Assembly is the highest body of the Bar," and his election to the assembly establishes that his "achievements are recognized nationally." A translated copy of the Assembly's Charter, however, states: "The Assembly elects one Delegate for *every ten lawyers* from a single law community," indicating that ten percent of all bar association members are also delegates. (Emphasis added.) Furthermore, the reference to "a single law community" indicates that the elections are local, rather than national. In the Petitioner's case, the Charter established four law communities in the city of [redacted] and the letter from the Bar Association states that he is "a delegate from the Law Community [redacted]."

There is no evidence that any lawyers outside the [redacted] law community voted for that community's delegates, and no indication that the votes were contingent on outstanding achievements by candidates. The Petitioner maintains that, given the nature of the selection process, "only those who have outstanding achievements will be selected," but a letter from the organization indicates that "lawyers elect their representatives," indicating that the selections are made by the general membership rather than any designated group or panel of recognized national or international experts. The Petitioner acknowledges that "all members of the bar" are eligible to vote, but he asserts that "at least some [voters] will have national recognition in [redacted]." The ability to vote, however, is not restricted to lawyers with such recognition. The statistical possibility that the [redacted] law community probably includes prominent lawyers is not sufficient to establish that the Petitioner satisfies this criterion.

The Petitioner cites an "expert opinion letter" from an attorney and adjunct professor in New York, who states: "As with any such organization, the [redacted] requires outstanding achievements of its members for

such an important and high-profile position. Not only are outstanding achievements required but also recognition as [the Petitioner] had to be nominated to this position by his peers and then had to win election amongst others who were also nominated." The individual who wrote this letter does not establish first-hand familiarity with the [redacted]s delegate election process, nor does she cite any sources for her claims of fact. The record does not establish any specific facts about the Petitioner's election to his delegate position. For instance, the record does not show that the election was in fact contested between different nominees. The Petitioner cites this same letter in support of other claims, but the letter essentially repeats the Petitioner's own claims without citing specific, objective support for them.

The [redacted] is an association in the field, but the record does not establish (and the Petitioner does not claim) that it requires outstanding achievements of its members, as judged by recognized national or international experts. The Petitioner relies on his membership not in the [redacted] as a whole, but in its Assembly. The information in the record, however, does not establish that the Assembly is an association in the field in its own right. Rather, it is the governing body for the [redacted]

The Petitioner has not satisfied the regulatory requirements for 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)

As noted above, the Petitioner submits letters from local [redacted] officials of [redacted] and [redacted] In addition to claiming that these letters are prizes or awards as discussed above, the Petitioner also contends that they show he performed in leading or critical roles for both organizations. The letters show that the Petitioner performed specified tasks for both organizations, such as "comparative analysis of ECEC policies and laws in the region."

The Petitioner also submits copies of agreements indicating that the [redacted] Alien Office temporarily hired him "to help the [redacted] Desk Accessibility . . . expand an information platform on access to health care in countries of origin." The Petitioner's role consisted of "answering . . . Questions and Answers" and "drafting a country questionnaire whose content focuses on the healthcare system." The Petitioner does not establish that this work amounted to a critical role, rather than an *ad hoc* advisory capacity.

The Petitioner asserts that he "was a 'leader' [for] [redacted] because the letter shows that he "manage[d] a team of legal experts," and that his role was critical because his engagement permitted [redacted] to "accomplish their goal of gaining approval for their proposed provisions." The Petitioner asserts that his work for [redacted] was critical because, according to that organization's letter, his work produced "outstanding results." With regard to his work for a [redacted] government agency, the Petitioner states that his work was essential because the contracts indicated that the agency "required the insight of a specialist." The Petitioner cites a dictionary definition of "require" as "to demand as necessary or essential: have a compelling need for."

We have taken these arguments into consideration, but we conclude that the Petitioner has not shown that his narrow and limited involvement as a legal consultant was critical to any of these organizations. Also, the Petitioner did not have a leading role for [redacted] at the organizational level, and he has not shown that the "team of legal experts" was, itself, an organization or establishment with a distinguished reputation. The submitted letters and contracts show that the organizations retained the Petitioner's

services in order to meet specific goals, but it does not follow that a reason for employment amounts to a critical role. Every employee fulfills some kind of role that benefits their employer in some way. Here, the Petitioner has not established that his work for the above entities was critical to the organizations themselves, rather than to the outcome of specific, limited tasks or projects.

The Petitioner has documented his work for well-known organizations, but he has not established that his tasks there amounted to leading or critical roles.

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 criterion at 8 C.F.R. § 204.5(h)(3)(iii), relating to published material about the individual in professional or other major trade publications or other major media, cannot change the outcome of this appeal. Therefore, we reserve this issue.[2]

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 individuals already at the top of their respective fields, rather than for individuals 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 that his occasional work for high-profile clients, and his service as a delegate to a governing body that includes 10% of all [redacted] members, establishes the required sustained national or international acclaim or 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 bears the burden of proof in this proceeding, and his assertions regarding his awards, his [redacted] delegate position, and other accomplishments lack sufficient corroboration. The objective documentation in the record indicates more limited impact and recognition. For example, the Petitioner co-wrote a chapter in a law textbook, but the only documented use of that textbook is in a course taught by the book's editor.

The Petitioner has not demonstrated eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.

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[2] *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).