Non-Precedent Decision of the Administrative Appeals Office

In Re: 30627086

Date: APR. 11, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a chief financial officer, 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 Texas Service Center denied the petition, concluding the Petitioner did not demonstrate receipt of a one-time achievement or that he satisfied at least three of the initial evidentiary criteria. The matter is now before us on appeal. 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,
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> (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
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> (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 achievements in the field through a one-time achievement (that is, a major, internationally recognized award) or 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 Director concluded the Petitioner did not establish his receipt of a major, internationally recognized award. In addition, the Director determined the Petitioner did not fulfill any of the seven claimed categories of evidence. On appeal, the Petitioner maintains his qualification for six criteria. Issues and prior eligibility claims not raised on appeal are waived. *See, e.g., 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)).

In addition, the Petitioner submits new evidence and argues new eligibility claims on appeal. Because the Petitioner was put on notice and given a reasonable opportunity to provide this evidence and make these claims, we will not consider them for the first time on appeal. *See* 8 C.F.R. § 103.2(b)(11) (requiring all requested evidence be submitted together at one time); *Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988) (declining to consider new evidence submitted on appeal because "the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the denial"). Thus, we will only address the evidence and claims brought before the Director and contested on appeal. For the reasons discussed below, the Petitioner did not establish he meets at least three categories of evidence.

> *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).

USCIS determines if the association for which the person claims membership requires that members have outstanding achievements in the field as judged by recognized experts in that field.[1] The

[1] *See generally* 6 USCIS Policy Manual F.2(B)(1), https://www.uscis.gov/policymanual.

petitioner must show that membership in the association requires outstanding achievements in the field for which classification is sought, as judged by recognized national or international experts.[2]

On appeal, although he briefly mentions his membership with the Chartered Professional Accountants of Ontario (CPAO), the Petitioner does not contest the Director's decision or address his eligibility with CPAO. Rather, the Petitioner's brief only makes arguments relating to his membership with [ ] An issue not raised on appeal is waived. *See, e.g., O-R-E-*, 28 I&N Dec. at 336 n.5; *see also Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (declining to address a "passing reference" to an argument in a brief that did not provide legal support). Therefore, we will only respond to the Petitioner's membership with [ ]

In response to the Director's request for evidence (RFE), the Petitioner claimed eligibility for this criterion based on his executive membership with [ ] and submitted a letter from F-D-, former executive vice-president and chief executive officer for [ ], who stated:

> As [ ] does not have "by-laws" for requirements for his executive membership as CFO as requested by USCIS, the process of appointing him in this prestigious position was exactly the same internally as that of naming him the CFO, without the financial risk to him and his family. By all board members and constituents, he was always referred to as the organization's CFO including bankers, government officials and personnel, as he had gained their respect in navigating the difficult financial situation the organization had faced.
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> . . . .
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> International experts including our CEO must approve all executive memberships in our organization, including [the Petitioner's] CFO position. To qualify as an executive member of our association, the applicant must have outstanding achievements as judged by recognized national or international experts including the CEO of our organization. All CEOs of our association must be international experts.

Although the letter indicates the absence of bylaws for executive membership, the letter does not point to any governing principles, regulations, or other source information to support the claim for [ ] executive membership requirement. Instead, the letter simply repeats the language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii) of "outstanding achievements." Repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). Furthermore, the letter does not further elaborate and explain how [ ] defines "outstanding achievements" or what constitutes "outstanding achievements." Without supporting evidence and additional information, the Petitioner's submission of a letter repeating regulatory language is insufficient to demonstrate that [ ] requires outstanding achievements for executive membership.

[2] *Id.*

Similarly, the letter claims that "[o]ur board of directors, who approved his appointment and executive membership were each international experts in their own field" and then lists a dozen individuals with their occupations. However, the Petitioner did not provide any supporting evidence for any of these individuals to show their status as recognized national or international experts in their fields or disciplines. Again, without corroborating evidence and further information, the Petitioner's submission of a letter that lists names and occupations is insufficient to show the national or international recognition of the individuals who judge [ ] executive membership.

Accordingly, the Petitioner did not establish he satisfies this criterion.

> *Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.* 8 C.F.R. § 204.5(h)(3)(iii).

USCIS first determines whether the published material was related to the person and the person's specific work in the field for which classification is sought.[3] USCIS then determines whether the publication qualifies as a professional publication, major trade publication, or other major media publication.[4]

The Petitioner claims eligibility for this criterion based on material from reuters.com and rumbominero.com. The Petitioner submitted a screenshot from reuters.com of an announcement simply stating "* [ ]– [the Petitioner] as company chief financial officer." The document contains no additional context or discussion, and the Petitioner did not demonstrate how a blurb qualifies as published material about the Petitioner relating to his work consistent with this regulatory criterion. In addition, the screenshot indicates that the snippet was "By Reuters Staff." However, the Petitioner did not identify the specific author among the Reuters Staff.

Further, in response to the Director's RFE, the Petitioner submitted two articles posted on rumbominero.com. One article, dated [ ] 2023, occurred after the filing of the petition. Eligibility must be established at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). Regardless, neither article reflects published material about the Petitioner. Instead, the articles report on [ ] "OCA Lithium Project." The published material should be about the person, relating to the person's work in the field, not just about the person's employer and the employer's work or another organization and that organization's work.[5] The person and the person's work need not be the only subject of the material; published material *See also, e.g., Negro-Plumpe v. Okin,* 2:07-CV-820-ECR-RJJ at *1, *7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles regarding a show are not about the actor). Here, the Petitioner is never mentioned in either of the articles, let alone regarding him, and therefore do not show published material about the Petitioner as required by this regulatory criterion. As such,

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[3] *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1).
[4] *Id.*
[5] *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1).

we need not determine whether rumbominero.com represents a professional or major trade publication or other major medium.[6]

For the reasons discussed above, the Petitioner did not demonstrate he meets this criterion.

> *Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.* 8 C.F.R. 204.5(h)(3)(iv).

USCIS determines whether the person has acted as the judge of the work of others in the same or an allied field of specification.[7] The petitioner must show that the person has not only been invited to judge the work of others, but also that the person actually participated in the judging of the work of others in the same or allied field of specialization.[8] For example, a petitioner might document the person's peer review work by submitting a copy of a request from a journal to the person to do the review, accompanied by evidence confirming that the person actually completed the review.[9]

The Petitioner claims to meet this criterion based on judging at Distributive Education Clubs of America (DECA). The record reflects the Petitioner submitted a letter from M-C- who stated:

> CMA [Certified Management Accountants of Ontario] actively participated in many business conferences where our members were involved to judge case competitions – predominantly for university students – and [the Petitioner] was among our ideal candidates given the breadth of his knowledge and business experience. He not only judged at DECA . . . for a number of years but he also judged case competitions at the University of Toronto.

The letter, however, does not contain specific, detailed information reflecting probative evidence of the Petitioner's judging experience. For example, the letter does not include names of individuals, titles of competitions, or dates of judging. In addition, the Petitioner did not offer any evidence to support the claims in the letter. Without additional information or evidence, the Petitioner's submission of letter that makes vague claims is insufficient to fulfill this criterion.

Accordingly, the Petitioner did not show he satisfies this criterion.

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[6] *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1) (in evaluating whether a submitted publication is a professional publication, major trade publication, or major media, relevant factors include the intended business audience (for professional and major trade publications) and the relative circulation, readership, or viewership (for major trade publications and other major media).
[7] *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1).
[8] *Id.*
[9] *Id.*

> *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).

In order to satisfy the regulation at 8 C.F.R. § 204.5(h)(3)(v), USCIS determines whether the person has made original contributions in the field.[10] USCIS then determines whether the original contributions are of major significance to the field.[11] Examples of relevant evidence include, but are not limited to: published materials about the significance of the person's original work; testimonials, letters, and affidavits about the persons original work; documentation that the person's original work was cited at a level indicative of major significance in the field; and patents or licenses deriving from the person's work or evidence of commercial use of the person's work.[12]

At the outset, the Petitioner references three of our non-precedent decisions and asserts that "[b]usinessmen with far less contributions have been approved by the AAO" and claims that "[b]eneficiary was a CEO of just one company and their petition was approved," "CEO of just two companies and got approved," and "[c]o-founder of just one company." These decisions were not published as precedents and therefore do not bind USCIS officer in future adjudications. *See* 8 C.F.R. § 103.3(c). Furthermore, the issue for this criterion is not the number of executive positions or co-founding credits by an individual. *Compare* 8 C.F.R. § 204.5(h)(3)(viii) requiring, in part, the individual to have performed in a leading or critical role. Rather, the individual must have made original contributions of major significance in the field. *See* 8 C.F.R. § 204.5(h)(3)(v).[13]

The Petitioner further asserts that he "has ten times the contributions of these business people" but does not further elaborate, specifically identify his contributions, or explain how his contributions are ten times more. Unsubstantiated assertions do not constitute evidence. *See, e.g., Matter of S-M-*, 22 I&N Dec. 49, 51 (BIA 1998) ("statements in a brief, motion, or Notice of Appeal are not evidence and thus are not entitled to any evidentiary weight"). Regardless, simply making contributions is not sufficient to meet this criterion unless the Petitioner shows those contributions have been majorly significantly in the field.[14]

Notwithstanding the above, the Petitioner argues that his "methodologies have been adopted by companies that he directs and also non related companies" and references three recommendation letters. Although the letters highly praise the Petitioner for his work for various companies, they do not identify the Petitioner's contributions and explain how they have been majorly significant in the field. Instead, the letters make broad claims regarding his work in his positions for companies. For instance, "[the Petitioner] holds immense importance throughout our organization, considering the global reach and industry landscape as we operate in 8 different countries," and "[the Petitioner] has consistently demonstrated exemplary performance, characterized by a persistent drive for excellence

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[10] *See generally* 6 USCIS Policy Manual, *supra*, at F.2(B)(1).
[11] *Id.*
[12] *Id.*
[13] *See also generally* 6 USCIS Policy Manual, *supra*, at F.2(B)(1) (analysis under this criterion focuses on whether the person's original work constitutes major, significant contributions in the field).
[14] *See generally* 6 USCIS Policy Manual, *supra*, at F.2(B)(1) (evidence that the person's work was funded, patented, or published while potentially demonstrating the work's originality, will not necessarily establish, on its own, that the work is of major significance in the field).

and an untiring dedication to accomplish our company's financial goals and execute the board of director's directives" (C-A-); "[the Petitioner] has exhibited outstanding leadership, expertise, and a deep comprehension of financial, both capital market regulations as well as financial engineering and drafting of financial statement in addition to the real estate industry," and "[t]he financial decisions and strategies implemented by [the Petitioner] directly impact our company's performance, investment decisions, and contribute to the economic growth and stability, while providing a stable predictable dividend to our shareholders residing throughout the United States and Canada" (S-W-); and "[t]he financial decisions and strategies implemented by our CFO directly influence our company's performance, and investment decisions, and ultimately contribute to the economic growth and stability of our national and that of the United States," and "[w]ithin our organization, he has identified and judged the financial projections and costs of various Lithium proposals and through his hard work and special skills, was responsible for us to be able to acquire the [redacted] in Ontario, Canada" (R-S-).

As evidenced above, the letters reflect how much his employers value the Petitioner to their companies. However, the letters do not explain what the Petitioner has contributed in the field and how those contributions are considered to be of major significance in the field. In addition, the letters make general claims and point to the Petitioner's impact on the individual companies rather than on the overall field. *See Visinscaia*, 4 F. Supp. 3d at 134-35 (upholding a finding that a ballroom dancer had not met this criterion because she did not corroborate her impact in the field as a whole). Moreover, the letters do not articulate how the Petitioner's performances in his roles at the companies somehow influenced or affected the field in a significantly major manner.

Detailed letters from experts in the field explaining the nature and significance of the person's contribution may also provide valuable context for evaluating the claimed original contributions of major significance, particularly when the record includes documentation corroborating the claimed significance.[15] Submitted letters should specifically describe the person's contribution and its significance to the field and should also set forth the basis of the writer's knowledge and expertise.[16] In this case, the letters lack specific, detailed information explaining how the Petitioner has made original contributions of major significance. USCIS need not accept primarily conclusory statements. *1756, Inc. v. The U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.C. Dist. 1990).

For the reasons discussed above, considered both individually and collectively, the Petitioner has not shown he has made original contributions of major significance in the field.

III. CONCLUSION

The Petitioner did not establish he satisfies four categories of evidence, discussed above. Although the Petitioner also argues eligibility for the leading or critical role criterion under 8 C.F.R. § 204.5(h)(3)(viii) and high salary under 8 C.F.R. § 204.5(h)(3)(ix), we need not reach these additional grounds because the Petitioner cannot fulfill the initial evidentiary requirement of three under 8 C.F.R.

[15] *See generally* 6 USCIS Policy Manual, *supra*, at F.2(B)(1).
[16] *Id.*

§ 204.5(h)(3). We also need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. Accordingly, we reserve these issues.[17]

Nevertheless, we have reviewed the record in the aggregate, concluding 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 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"). *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")); *Lee v. Ziglar*, 237 F. Supp. 2d 914, 918 (N.D. Ill. 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 individual 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.

[17] *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, n.7 (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).