U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29849078

Date: APR. 17, 2024

Appeal of Texas Service Center Decision

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

The Petitioner 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 it demonstrate that he met at least three of the ten regulatory criteria. The matter is now before us on appeal. 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.

The Director decided that the Petitioner met two of the mandatory minimum of three criteria relating to prizes or awards and membership, but that he had not satisfied the criteria associated with published material or leading or critical role. The Director also determined the Petitioner's material submitted as comparable evidence would not be considered, as he did not explain why the regulatory criteria did not readily apply to his occupation. On appeal, the Petitioner maintains that he meets the same elements he claimed before the Director. After reviewing all the evidence in the record, we conclude he has not satisfied any additional requirements based on his appellate filing.

After reviewing the entire record, we adopt and affirm the Director's decision with the added comments below. *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 the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted the issue"); *Martinez-Lopez v. Barr*, 943 F.3d 766, 769 (5th Cir. 2019) (joining every other U.S. Circuit Court of Appeals in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case).

He first claims he meets the published material criterion within the appeal under the regulation at 8 C.F.R. § 204.5(h)(3)(iii). But the Petitioner merely claims he submitted extensive evidence before the Director and indicates he has recently won various championships of international recognition including in event in April, May, and October of 2023.

But, the reason for filing an appeal is to provide an affected party with the means to remedy what they perceive as an erroneous conclusion of law or statement of fact within a previous proceeding. *See* 8 C.F.R. § 103.3(a)(1)(v). By presenting only a generalized statement of an error without explaining the specific aspects they consider to be incorrect, the affected party has failed to identify the basis for contesting this requirement on appeal. *See Matter of Pougatchev*, 28 I&N Dec. 719, 729 (BIA 2023) (concluding issues that are not meaningfully appealed are waived); *see also 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) and finding when a filing party mentions an issue without developing an argument, the issue is deemed waived); *Darling Ingredients, Inc. v. Occupational Safety & Health Rev. Comm'n*, 84 F.4th 253, 264 (5th Cir. 2023).

Also, as he filed the petition in March of 2023, he cannot benefit from awards he earned after that date in this petition and if he elects to include those achievements for consideration under this immigrant classification, he must do so within a new petition filing. A petitioner must establish eligibility at the time the visa petition is filed. 8 C.F.R. § 103.2(b)(1), (12). USCIS may not approve a visa petition if the Petitioner was not qualified at the priority date but expects to become eligible at a subsequent time. *See Matter of Izummi,* 22 I&N Dec. 169, 175–76 (Assoc. Comm'r 1998); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971).

Next, the Petitioner addresses his leading or critical role claims under 8 C.F.R. § 204.5(h)(3)(viii). Although the Petitioner identifies the evidence he claims demonstrates his eligibility under this criterion, he did not provide any explanation regarding how or why such material satisfies the plain language requirements of the regulation. This falls short of the Petitioner meeting the burden of proof.

The Petitioner's burden of proof comprises both the initial burden of production, as well as the ultimate burden of persuasion. *Matter of Y-B-*, 21 I&N Dec. 1136, 1142 n.3 (BIA 1998); *also see* section 291 of the Act; 8 U.S.C. § 1361. "Commensurate with that burden is responsibility for explaining the significance of proffered evidence. The significance of [the evidence] is for [a petitioner] to put in context and explain in a meaningful way." *Repaka v. Beers*, 993 F. Supp. 2d 1214, 1219 (S.D. Cal. 2014); *Innova Sols., Inc. v. Baran*, 338 F. Supp. 3d 1009, 1023 (N.D. Cal. 2018); *Eguchi v. Kelly*, No. 3:16-CV-1286-D, 2017 WL 2902667, at *3 (N.D. Tex. July 7, 2017).

Finally, the Petitioner's appeal reflects we should accept the letters from his colleagues because his sport is not popular in the United States. We note the Director indicated these letters would not be considered in their evaluation of the Petitioner's eligibility and they stated:

> The petitioner submitted several letters of reference from expert athletes and trainers in his field. However, the petitioner does not specify how these letters are comparable to the evidentiary criteria specified at 8 C.F.R. § 204.5(h)(3)(i)-[(x)], or explain why those criteria do not readily apply to his occupation. The burden is on the petitioner to demonstrate this.

First, the Director noted the Petitioner's failure to explain how the letters were comparable to any of the individual criteria, and he does not address that shortcoming in the appeal. Second, the Petitioner's blanket statement that several of the criteria simply don't apply to his occupation is not allowed under USCIS policy that states: "A general unsupported assertion that the listed evidentiary criterion does not readily apply to the petitioner's occupation is not probative." *See generally* 6 *USCIS Policy Manual* B.1, https://www.uscis.gov/policymanual. And as a final note, the USCIS Policy Manual also states "general claims that USCIS should accept witness letters as comparable evidence are not persuasive." *See generally* 6 *USCIS Policy Manual*, *supra*, at B.1. For these reasons, we are not persuaded by the Petitioner's comparable evidence arguments on appeal.

ORDER: The appeal is dismissed.