U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29836794

Date: FEB. 20, 2024

Appeal of Texas Service Center Decision

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

The Petitioner is a self-described life coach and motivational leader who 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 that the Petitioner did not establish that they received a major, internationally recognized award, nor did they demonstrate that they 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.

I. LAW

To qualify under this immigrant classification, the statute requires the filing party demonstrate:

- The foreign national enjoys extraordinary ability in the sciences, arts, education, business, or athletics;
- They seek to enter the country to continue working in the area of extraordinary ability; and
- The foreign national's entry into the United States will substantially benefit the country in the future.

Section 203(b)(1)(A)(i)–(iii) of the Act. 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 Amin v. Mayorkas*, 24 F.4th 383, 394 (5th Cir. 2022).

II. ANALYSIS

The Petitioner characterizes his claimed abilities as a life coach, motivational leader, and business and organizational advisor. Within the appeal, it appears the Petitioner has resubmitted the documentary evidence that was already part of the record before the Director, and essentially presents the same arguments as those within the previous proceeding. While the Petitioner expresses disagreement with the Director's determinations, the appeal brief lacks details explaining how they are eligible instead of simply that the Director was incorrect.

A. Evidentiary Criteria

Because the Petitioner has not indicated or established 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). Before the Director, the Petitioner claimed he met five of the regulatory criteria. The Director decided that the Petitioner satisfied one of the criteria relating to: a leading or critical role, but he had not satisfied the criteria associated with prizes or awards, published material, original contributions, or authorship of scholarly articles.[1] On appeal, the Petitioner maintains that he meets the evidentiary criteria he previously claimed. After reviewing all the evidence in the record, we conclude he has not demonstrated he meets at least three of the regulatory criteria.

We begin with the Petitioner's broad claim that the Director did not give sufficient weight to advisory statements from a claimed expert who opines that the Petitioner appears to satisfy at least five of the regulatory criteria and is qualified for this classification. While we will consider all evidence in the record and attribute to it the appropriate evidentiary weight, the final determination of whether

[1] It appears the Director did not discuss the Petitioner's eligibility under the original contributions criterion even though he asserted those claims both in the initial filing and in response to the Director's request for evidence.

evidence satisfies the requirements of a regulation or meets the burden of proof lies with USCIS. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988) (finding that the appropriate entity to determine eligibility is USCIS); *see also Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (2012) (citing *Matter of Caron International* for the same prospect).

> *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 provided the same titled accolade he received in 2010 and 2011; the title of Speaker of the Year from the [redacted]. The Director determined the Petitioner did not meet the requirements of this criterion. On appeal the Petitioner contends the Director did not sufficiently consider his evidence relating to [redacted] as well as a testimonial letter from [redacted] an Assistant Professor of the [redacted] [redacted]

This criterion contains several evidentiary elements, all of which must be met to satisfy the regulation. According to the plain language of the regulation the evidence must establish: (1) the foreign national is the recipient of the prizes or the awards; (2) those accolades are nationally or internationally recognized; and (3) each prize or award is one for excellence in the field of endeavor. Appropriate lines of inquiry under this criterion include the number of awardees, the criteria by which awardees are selected, the selection process itself, the entity that granted the award, and evidence that addresses the reputation of the award within the field. As the regulation specifies that the awards must be for excellence in the field of endeavor, it is reasonable for the Service to require evidence that the award is merit-based, which discounts evidence showing mere participation in the field. *Krasniqi v. Dibbins*, 558 F. Supp. 3d 168, 182–83 (D.N.J. 2021).

The Petitioner provided certificates reflecting he was named as the recipient of these accolades. In support of the requirement that these accolades are nationally or internationally recognized, the Petitioner offered information from [redacted] However, it lacked any reference to the accolades the Petitioner received in 2010 or 2011. The organization identified two certifications it issues, and those consisted of Company or Entrepreneur of the Year, and Member Certificate. Neither of these certifications are the accolade the Petitioner received.

Indeed, the Petitioner offered coverage of this accolade that another person received in 2018, and this coverage appeared on a website, [redacted]. The Petitioner, however, provides no evidence to establish the popularity of the website such that event coverage on the site is indicative of national or international recognition. National or international accessibility by itself is not a realistic indicator of a given website's reputation. The Petitioner has not presented any evidence to establish that the content from [redacted] can be considered to receive national or international recognition.

Turning to the letter from [redacted], he only addresses [redacted] and does not present any opinions attempting to establish the accolade the Petitioner received (the title of Speaker of the Year) is nationally or internationally recognized in the foreign national's field of endeavor. Absent from the record is the criteria by which the title recipients are selected, the selection process itself, and evidence that addresses the reputation of the award within the field. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) specifically requires that the Petitioner's awards be nationally or

internationally recognized in the field of endeavor and the Petitioner has not submitted evidence that meets those requirements.

> *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).

The Petitioner provided six articles he claims are about him and related to his work, as well as information about each of the publications. He did not specify what type of publication (a professional or major trade publication, or other major media) each article appeared in, but he did indicate his "professional achievements have been published in major media sources" and we will treat them as such. The Director determined that the Petitioner did not meet the requirements of this criterion. The Director decided the material was not sufficiently about the Petitioner's work and that he did not demonstrate the publications were qualifying because the record lacked circulation statistics for both the publications he was submitting, as well as other publications in which to compare to his offered evidence.

A review of the articles reveal they are primarily about the Petitioner and his work in the field. However, we agree with the Director that the evidence the Petitioner presented relating to the articles constituting major media are inadequate. When USCIS evaluates whether a submitted publication is other major media, relevant factors include the relative circulation, readership, or viewership that should be compared to other similar statistics. *See generally* 6 *USCIS Policy Manual* B.1, https://www.uscis.gov/policymanual. The phrase "other major media" is generally accepted to mean a publication with significant reach and recognition, and it follows that we may reasonably require evidence of the same type of reach and recognition through circulation data. *Krasniqi*, 558 F. Supp. 3d at 185.

We are also not required to accept a publication's own claims relating to whether it qualifies as major media, as such self-serving claims are not sufficiently probative. *Id.* (citations omitted). Probative evidence is the type that "must tend to prove or disprove an issue that is material to the determination of the case." *Matter of E-F-N-*, 28 I&N Dec. 591, 593 (BIA 2022) (quoting *Matter of Ruzku*, 26 I&N Dec. 731, 733 (BIA 2016)); *see also* Evidence, *Black's Law Dictionary* (11th ed. 2019). Therefore, if some form of the Petitioner's evidence does not adequately prove their contention, then it is not considered to be probative. When combined with other favorable material, evidence that is not probative on its own could exist on a palette in which the Petitioner "paints a mosaic" that sufficiently demonstrates the Petitioner's claims. However, the Petitioner has not crafted such a tapestry here. In summary, the Petitioner has not submitted evidence that meets the regulation's requirements relating to other major media.

We now discuss the actual evidence and begin with the article in the newspaper [redacted] The Petitioner provided a document from [redacted] purportedly reflecting the daily average readers through a bar chart comparing this publication with numerous publications in various South American countries. This document does not contain the date the data was published, does not reflect whether this applies to newspaper sales or website visits, nor does it demonstrate this publication's circulation statistics are on par with the other examples in the bar chart. We note [redacted]

ranks the second lowest out of the 11 examples presented. The Petitioner has not shown that this publication's circulation statistics are high when compared to similar media sources. *See generally* 6 *USCIS Policy Manual*, *supra*, B.1.

Next, the Petitioner offers a Sunday magazine appearing in the . The Petitioner supports his claims this is major media through material from itself describing its history and the services it provides. He also offers a translated document from . Although the Petitioner provided evidence from reflecting is a national-level publication, he did not offer other circulation material in which to compare to the Sunday magazine of this newspaper.

The remaining articles appearing in each suffer the same shortcomings as the above evidence; a lack of circulation statistics in which to compare with the submitted evidence. As it stands, the Petitioner has not demonstrated any of the material he submitted qualifies to satisfy 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).

The Petitioner provided letters and informational evidence relating to four organizations. Although the Director determined that the Petitioner met the requirements of this criterion, we do not agree.

A leading role should be apparent by its position in the overall organizational hierarchy and the role's matching duties. A critical role should be apparent from the Petitioner's impact on the entity's activities. The Petitioner's performance in any role should establish whether it was leading or critical for organizations, establishments, divisions, or departments *as a whole*. Ultimately, the leading or the critical role must be performed on behalf of the organization, establishment, division, or department that enjoys a distinguished reputation, rather than for a unit subordinate to these listed entities. *See generally* 6 *USCIS Policy Manual* B.1, https://www.uscis.gov/policymanual. USCIS policy reflects that organizations, establishments, divisions, or departments that enjoy a distinguished reputation are "marked by eminence, distinction, or excellence." *Id.* (citing to the definition of *distinguished*, *Merriam-Webster*, https://www.merriam-webster.com/dictionary/distinguished). The Petitioner must submit evidence satisfying all of these elements to meet the plain language requirements of this criterion.

While the Petitioner provided letters and information relating to each of the four organizations, a review of those letters reveals they lack the detail required to demonstrate whether his role in each entity was of a leading or critical nature. The letters do not describe how the Petitioner's workshops impacted each establishment, and it does not appear that he held a leading role in any of the organizations, as required.

For example, the Petitioner provided a translated letter from , a Partner at , a brand management company. letter simply states the company has already begun to implement a few of the fast-track alternatives reviewed with the Petitioner in workshops, and is happy to report that their clients have greatly appreciated the results. The Petitioner has not established how his role has been critical to , as neither he nor explain

how that company has progressed since the classes, or how the workshops resulted in any measurable success since he provided the seminars. The remaining letters do not offer any further details regarding the Petitioner's leading or critical roles he might have performed for the companies.

Accordingly, we withdraw the Director's favorable determination as it relates to this criterion.

B. We Reserve Other Eligibility Determinations

While the Petitioner argues and submits evidence for two additional criteria on appeal relating to original contributions at 8 C.F.R. § 204.5(h)(3)(iv) and authorship of scholarly articles at 8 C.F.R. § 204.5(h)(3)(vi), it is unnecessary for us to address these additional grounds because he 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 these issues. *Patel v. Garland*, 596 U.S. 328, 332 (2022) (citing *INS v. Bagamasbad*, 429 U.S. 24, 25–26 (1976) (finding agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision)); *see also Matter of Chen*, 28 I&N Dec. 676, 677 n.1, 678 (BIA 2023) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

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 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.

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. USCIS 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 their 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). Moreover, the record does not otherwise demonstrate that the Petitioner has garnered national or international acclaim in the field, and 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).

For the reasons discussed above, the Petitioner has not demonstrated their 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.