U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29731370

Date: FEB. 20, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, a clinical psychologist and researcher, 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 Director of the Nebraska Service Center denied the petition, concluding the Petitioner did not establish that the Beneficiary meets the initial evidence requirements for this classification by satisfying at least three of the ten criteria under 8 C.F.R. § 204.5(h)(3) or demonstrating his receipt of a major, internationally recognized award. 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

An individual is eligible for the extraordinary ability immigrant classification under section 203(b)(1)(A) of the Act if:

- They have extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and their achievements have been recognized in the field through extensive documentation;
- They seek to enter the country to continue working in the area of extraordinary ability; and
- Their entry into the United States will substantially benefit the country in the future.

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 a beneficiary's one-time achievement (that is, a major, internationally recognized award). If a petitioner

does not submit this evidence, then they must provide documentation that the beneficiary 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 demonstrates that the beneficiary 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).

II. ANALYSIS

A. Petitioner's Signature

The regulation at 8 C.F.R. § 103.2(a)(2) provides that "[u]nless otherwise specified in this chapter, an acceptable signature on a benefit request that is being filed with the USCIS [U.S. Citizenship and Immigration Services] is one that is either handwritten or, for benefit request filed electronically as permitted by the instructions to the form, in electronic format."[1]

The *USCIS Policy Manual* provides that in "general, any person requesting an immigration benefit must sign their own immigration benefit request, and any other associated documents, before filing it with USCIS." *See generally 1 USCIS Policy Manual* C.1 (citing to 8 C.F.R. § 103.2(a)(2)), https://www.uscis.gov/policymanual. USCIS policy explains that a valid signature is "any handwritten mark or sign made by a person" and such signature must be made by the person who is the affected party with standing to file the benefit request to signify that "[t]he person knows of the content of the request and any supporting documents; [t]he person has reviewed and approves of any information contained in such request and any supporting documents; and [t]he person certifies under penalty of perjury that the request and any other supporting documents are true and correct." *See generally 1 USCIS Policy Manual, supra,* at B.2(B). A person's signature on an immigration form establishes a strong presumption that the signer knows and has assented to its contents, absent evidence of fraud or other wrongful acts by another person. *Matter of Valdez*, 27 I&N Dec. 496, 499 (BIA 2018) (citing *Thompson v. Lynch*, 788 F.3d 638, 647 (6th Cir. 2015); *Bingham v. Holder*, 637 F.3d 1040, 1045 (9th Cir. 2011). The probative force of a declaration subscribed under penalty of perjury derives from the signature of the declarant.

Although the "regulations do not require that the person signing submit an 'original' or 'wet ink' signature on a petition, application, or other request to USCIS," USCIS does "not accept signatures created by a typewriter, word processor, stamp, auto-pen, or similar device." *See generally 1 USCIS Policy Manual, supra*, at B. *See also generally 1 USCIS Policy Manual, supra*, at A (stating that "[e]xcept as otherwise specifically authorized, a benefit requestor must personally sign his or her own request before filing it with USCIS"). USCIS has implemented these regulations and attendant policies "to maintain the integrity of the immigration benefit system and validate the identity of benefit

[1] The provisions governing electronic filings do not apply here.

requestors." *Id* at A. In the same way that one person signing a declaration "for" another person carries no evidentiary force, neither will an image of a signature duplicated using some electronic means or method. Without the signatory's actual and personal signature as the declarant, the declaration under the penalty of perjury on the Form I-140, Immigrant Petitioner for Alien Worker, has no evidentiary force. *See in re Rivera*, 342 B.R. 435, 458-459 (D. N.J. 2006).

Here, the Petitioner's signature on the Form I-140 was created by a word processor and, therefore, it was not properly signed, and the deficient signature should have resulted in the petition being improperly filed under 8 C.F.R. § 103.2(a). According to USCIS policy, "[i]f USCIS accepts a request for adjudication and later determines that it has a deficient signature, USCIS denies the request." *See 1 USCIS Policy Manual*, *supra*, at B.2(A). For this reason alone, the petition is dismissed. Nevertheless, we will also address whether the Petitioner qualifies for the extraordinary ability immigrant classification under section 203(b)(1)(A) of the Act.

B. Extraordinary Ability

The Petitioner is a clinical psychologist and researcher in New York. The Petitioner does not claim that he qualifies for extraordinary ability classification based on a one-time achievement; therefore, he must submit evidence demonstrating that he meets at least three of the ten initial evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Director determined that the Petitioner submitted sufficient evidence to establish participation as a judge of the work of others in the field and authorship of scholarly articles. *See* 8 C.F.R. § 204.5(h)(3)(iv), (vi). On appeal, the Petitioner continues to assert that he also meets the evidentiary criterion relating to high salary or other significantly high remuneration for services.

For the reasons provided below, we conclude that the Petitioner has not demonstrated that he satisfies the requirements of at least three of the ten criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x).

> *Evidence that the individual has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.* 8 C.F.R. § 204.5(h)(3)(ix)

The Petitioner provided his 2022 Form W-2 Wage and Tax Statement showing an income of $166,161 and pay statements from January 2022 to March 2022, and April 2023 to May 2023. In addition, the Petitioner submitted the May 2022 occupational employment and wage statistics (OEWS) page for clinical and counseling psychologists and salary data published by Indeed and ZipRecruiter.

Here, the Petitioner has not sufficiently documented how his salary compares to other clinical psychologists and researchers in order for us to evaluate whether his salary is high in relation to others in the field. The 2022 OEWS shows that the 90th percentile of clinical and counseling psychologists earn $168,790 annually in the United States, which is higher than the Petitioner's 2022 earnings. Further, the 90th percentile salary information is for a 2022 nationwide survey of workers in all settings, as well as across geographic areas, both major metropolitan areas and those that are not. *See* https://www.bls.gov/bls/wages.htm. In addition, there does not appear to be a research component included in the salary information. A petitioner claiming to meet this criterion must provide appropriate evidence such as geographical or position-appropriate compensation surveys. *See generally 6 USCIS Policy Manual* F.2(B)(l)(criterion 9), https://www.uscis.gov/policy manual.

Without more, such general information is insufficient to establish that he meets this criterion. *See Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994) (considering professional golfer's earnings versus other PGA Tour golfers); *see also Grimson v. INS*, 934 F. Supp. 965, 968 (N.D. Ill. 1996) (considering NHL enforcer's salary versus other NHL enforcers); *Muni v. INS*, 891 F. Supp. 440, 444-45 (N. D. Ill. 1995) (comparing salary of NHL defensive player to salary of other NHL defensemen).

With regard to Indeed, the information the Petitioner submitted identifies a "high" salary of $164,170 for a clinical psychologist in New York. While his salary of $166,161 is above this "high" salary, there is insufficient data to support a determination that he earns a high salary in relation to others working as clinical psychologists and researchers in New York. Further, some websites that rely on user-reported salary data may not provide a valid comparison if, for example, too few users reported their salaries, which may impact the reliability of the data. *See generally 6 USCIS Policy Manual*, *supra*, at F.2(B)(l). The information from Indeed shows that only 77 salaries were reported for this survey. Thus, based on the relatively small sample size, it is reasonable to conclude that it is insufficient to establish that he meets this criterion.

As for the information from ZipRecruiter, it shows that the "top earners" for clinical psychologists in New York earn $158,054 a year and states that it "is seeing salaries as high as $181,115," which is approximately $15,000 higher than the Petitioner's salary. Further, it does not define the scope or settings of positions it covers such that the Petitioner has established that the information is sufficiently similar to his own to satisfy this criterion.

For all these reasons, the Petitioner has not demonstrated that he meets this criterion.

Because the Petitioner has not submitted the required initial evidence demonstrating that the Beneficiary has a qualifying one-time achievement or that he meets at least three of the ten criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. We note, however, that 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 the top. 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) ; *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) (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")).

Here, the Petitioner has not shown that the significance of his 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 that he is one of the small percentage who

have 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).

ORDER: The appeal is dismissed.