U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 24187228

Date: FEB. 2, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, an electrical engineer, 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 met the initial evidence requirements for the classification by establishing his receipt of a major, internationally recognized award or by meeting three of the ten evidentiary criteria at 8 C.F.R. § 204.5(h)(3). 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 noncitizen 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 noncitizen seeks to enter the United States to continue work in the area of extraordinary ability, and
>
> (iii) the noncitizen'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 may demonstrate international recognition of their achievements in the field through a one-time achievement (that is, a major, internationally recognized award). Absent such an achievement, the petitioner must provide sufficient qualifying documentation demonstrating that they meet 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).

I. ANALYSIS

The record reflects the Petitioner is an electrical engineer. He obtained bachelor's and master's degrees in electrical engineering from the University of [redacted] Because the Petitioner has not indicated or shown that he 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). The Petitioner claims to have satisfied three of these criteria, summarized below:

- (i), Documentation of receipt of lesser nationally or international recognized prizes or awards for excellence in the field of endeavor;
- (iv), Participation as a judge of the work of others; and
- (v), Original contributions of major significance.

The Director determined that the Petitioner did not submit sufficient evidence to establish that he met any of the criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). On appeal, the Petitioner provides additional evidence and states that he submits "more objective evidence than personal statement." For the reasons discussed below, we agree with the Director that the Petitioner has not satisfied any of the claimed criteria.

A. Evidentiary Criteria

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).

On appeal, the Petitioner states that a portable charging device, called [redacted] received a Red Dot award, and he provides information printed from the internet indicating it received a Red Dot award in 2019. In addition, the Petitioner provides a letter from the company that manufactures [redacted] confirming it will employ the Petitioner as an electrical engineer. The Petitioner contends that as a team member helping develop [redacted] he was recognized with the Red Dot award. Although the Petitioner states he helped develop the product, the printout he submitted on appeal

named the designers of the product, and he was not named. Moreover, it appears that the Red Dot award was awarded to the product and the company that designed the product, and the Petitioner did not provide any evidence to indicate that he also received the award. Nor does the Petitioner submit sufficient information regarding the Red Dot award itself such that we can ascertain whether the process of winning that award aligns with this category's eligibility requirements.

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).

On appeal, the Petitioner provides photographs of his "light and objective specs" as proof of his ability to make "better lights and my capacity to evaluate others work." The Petitioner provides photographs taken of what appears to be a machine, but he did not describe the photographs or the machine they depict. The photographs are not sufficient evidence that the Petitioner judges the work of others in the same or an allied field.

On appeal, the Petitioner also provides email correspondence he exchanged with an "industry" company "asking comments from me and my reply to them." The Petitioner also provides an online google translation of the email correspondence, since parts of it took place in the Mandarin Chinese language. It is not sufficient to carry the Petitioner's burden. First, we have no context of the conversation and the line of questioning for the Petitioner, and without additional information it is impossible to determine the Petitioner's role with this company. Moreover, any document prepared in a foreign language must be accompanied by a full English language translation. 8 C.F.R. § 103.2(b)(3). The translator must certify that the English language translation is complete and accurate, and that the translator is competent to translate from the foreign language into English. *Id.* Because the Petitioner did not submit a properly certified English language translation of the document, we cannot meaningfully determine whether the translated material is accurate and thus supports the Petitioner's claims.

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).

The primary requirements here are that the Petitioner's contributions in their field were original and rise to the level of major significance in the field as a whole, rather than to a project or to an organization. *Amin v. Mayorkas*, 24 F.4th 383, 394 (5th Cir. 2022) (citing *Visinscaia*, 4 F. Supp. 3d at 134). The regulatory phrase "major significance" is not superfluous and, thus, it has some meaning. *Nielsen v. Preap*, 139 S. Ct. 954, 969 (2019) (finding that every word and every provision in a statute is to be given effect and none should needlessly be given an interpretation that causes it to duplicate another provision or to have no consequence). Further, the Petitioner's contributions must have already been realized rather than being potential, future improvements. Contributions of major significance connotes that the Petitioner's work has significantly impacted the field. The Petitioner must submit evidence satisfying all of these elements to meet the plain language requirements of this criterion.

On appeal, in support of this criterion, the Petitioner submits two letters written by companies that were used to support H-1B petitions filed on behalf of the Petitioner. The Petitioner states that he

assisted in inventing the [redacted] a portable charging device. The Petitioner claims that the H-1B support letter from [redacted] stated the Petitioner "contributed intensively and extensively towards [redacted] cutting-edge wireless charging products." Although the support letter outlines the duties the Petitioner will perform as an electrical engineer with [redacted] it does not provide sufficient information regarding the level of the Petitioner's involvement in the development of this charging device. In addition, the Petitioner did not provide sufficient evidence of the significance of this product in the field. Thus, the Petitioner did not demonstrate any original scientific contributions of major significance in the field.

On appeal, the Petitioner also describes portable fusion as an invention, and wrote "unique pattern from experiment in [redacted] City showing a huge impact on fusion industry" and provided photographs of a machine without any explanation. It is the Petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012). The Petitioner has not sustained that burden.

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 that 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. United States 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 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.