U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20636111

Date: JAN. 5, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, a vocational agriculture teacher, 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 does not establish the Petitioner satisfied at least three of the 10 initial evidentiary criteria. On appeal, the Petitioner asserts that the Director's decision was erroneous and that he has established eligibility for the requested classification.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 203(b)(1) 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 can demonstrate sustained acclaim and the recognition of their 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 they must provide sufficient qualifying documentation that meets at least three of the 10 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).

II. ANALYSIS

We first note that the record does not establish what the field of endeavor would be. On the Form I-140, Immigrant Petition for Alien Workers, the Petitioner stated that the job title is "vocational agriculture teacher," and that the duties include "training next generation of graduates in [m]olecular [b]iology and [b]iotechnology as related to [a]griscience." In a letter submitted in support of the petition, the Petitioner stated that he "seeks employment in the area of [m]olecular [b]iology and [b]iotechnology . . . in accord with [his] research and field of recognition." However, the record does not clarify whether the "vocational agriculture teacher's" field of endeavor would be working as an instructor of vocational skills for agricultural workers, working as an academic professor of science in a college or university, combining academic instruction with continued research in molecular biology and biotechnology in a college or university, or other possible fields of endeavor.

The Director found that the Petitioner did not establish that he received a major, internationally recognized award under the regulation at 8 C.F.R. § 204.5(h)(3); therefore, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Petitioner asserted that he satisfied the criteria at 8 C.F.R. § 204.5(h)(3)(i)-(ii), (v)-(vi), and (viii)-(ix); however, the Director concluded that the Petitioner satisfied none of the criteria. On appeal, the Petitioner reasserts that he satisfies the criteria at 8 C.F.R. § 204.5(h)(3)(i)-(ii), (v)-(vi), and (viii)-(ix). After reviewing the record in its entirety, we conclude that the Petitioner has not established by a preponderance of the evidence that he satisfies the requirements of at least three criteria, for the reasons discussed below.

> *Documentation of the [noncitizen]'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).

The Director acknowledged that the record establishes that the Petitioner is a member of the American Association for Advancement of Science (AAAS) and the Association for Career and Technical Education (ACTE). However, the Director advised the Petitioner that the record did not establish that the AAAS or the ACTE require outstanding achievements of their members in a request for evidence (RFE) and requested the Petitioner to submit such evidence. The Director acknowledged that the Petitioner provided additional information regarding the AAAS and the ACTE in response to the RFE; however, the Director noted that the information did not establish that either the AAAS or the ACTE

require outstanding achievements of their members, as required by the criterion at 8 C.F.R. § 204.5(h)(3)(ii). The Director concluded that the record did not establish that either the AAAS or the ACTE satisfied the plain language of the criterion of 8 C.F.R. § 204.5(h)(3)(ii).

On appeal, the Petitioner reasserts that his memberships in the AAAS and the ACTE satisfy the criterion at 8 C.F.R. § 204.5(h)(3)(ii), without elaborating on how the Director may have erred in concluding the contrary. Instead, the Petitioner states that the AAAS is a "[p]reeminent association providing policy leadership and peer engagement in [s]cience, technology, and public policy" and that the ACTE is a "[p]reeminent association providing leadership in technological education at the secondary and post-secondary levels."

Even if we consider the AAAS and the ACTE to be preeminent associations, the plain language of the criterion at 8 C.F.R. § 204.5(h)(3)(ii) states that only 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 the disciplines or fields satisfy the criterion. The Petitioner does not assert, and the record does not support the conclusion, that either the AAAS or the ACTE require outstanding achievements of their members. Therefore, the Petitioner's memberships in the AAAS and the ACTE do not satisfy the criterion at 8 C.F.R. § 204.5(h)(3)(ii).

> *Evidence of the [noncitizen]'s authorship of scholarly articles in the field, in professional or major trade publications or other major media.* 8 C.F.R. § 204.5(h)(3)(vi).

The record contains copies of articles co-authored by the Petitioner, which he asserts are under peer review. The Director acknowledged those articles; however, in the RFE the Director requested the Petitioner to provide evidence that the articles were published in professional publications, trade publications, or other major media, including circulation information specific to the media format in which it was published. The Petitioner's RFE response reiterated assertions already in the record, without providing the evidence the Director requested. Because the record did not contain evidence that the articles co-authored by the Petitioner were published in professional publications, trade publications, or other major media, the Director concluded that the record did not satisfy the criterion at 8 C.F.R. § 204.5(h)(3)(vi).

On appeal, the Petitioner references "[t]hree research manuscripts in review . . . being revised for publication," that he was the co-inventor of a patent assigned to [redacted] University, and that he submitted two additional patent applications. The Petitioner also states, "Ph.D. dissertation published." The Petitioner further references "[p]resentations in scientific conferences and meetings."

None of the information referenced by the Petitioner on appeal relates to evidence of his authorship of scholarly articles in the field published in professional or major trade publications or other major media. Manuscripts "being revised for publication" have not been published as of the date of filing; therefore, they cannot establish eligibility. *See* 8 C.F.R. § 103.2(b)(1). Patents filed with the U.S. Patent and Trademark Office are neither "scholarly articles in the field" nor "in professional or major trade publications or other major media." *See* 8 C.F.R. § 204.5(h)(3)(v). Similarly, simply stating that the Petitioner's Ph.D. dissertation has been published does not establish that it is a scholarly article in the field published in professional or major trade publications or other major media. Likewise, the

Director noted that the Petitioner referenced that he "co-authored conference presentations" in response to the Director's RFE but that the Petitioner did not submit evidence to support that assertion. The Petitioner's reference to "[p]resentations in scientific conferences and meetings" on appeal is not supported by corroborating evidence to establish the Petitioner satisfies the criterion relating to authorship of scholarly, published articles, nor does the Petitioner specifically address how the Director may have erred in reviewing any information in the record. It is the Petitioner's burden to establish eligibility for the requested benefit. *See* section 291 of the Act. In summation, because the record does not establish that the Petitioner has written scholarly articles in the field published in professional or major trade publications or other major media, it does not satisfy the criterion at 8 C.F.R. § 204.5(h)(3)(v).

> *Evidence that the [noncitizen] 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 record contains the Petitioner's *curriculum vitae* and recommendation letters from a professor emeritus of biology at [redacted] University and from a professor of biology at [redacted] University. In the RFE, the Director informed the Petitioner that neither the *curriculum vitae* nor the recommendation letters establish that the Petitioner performed in a leading or critical role for organizations or establishments that have a distinguished reputation, and the Director requested the Petitioner to provide such evidence. In response to the RFE, the Petitioner referenced information already in the record including his *curriculum vitae* and the recommendation letters. The Petitioner also addressed funding he received and he asserted that he continued to teach during the COVID-19 pandemic. However, the Director concluded that the record did not establish that the Petitioner has performed in a leading or critical role for organizations that have a distinguished reputation; therefore, it did not satisfy the criterion at 8 C.F.R. § 204.5(h)(3)(viii).

On appeal, the Petitioner reasserts that his graduate and post-doctoral research work and his activities "[t]raining school students in [v]ocational [a]griculture and [b]iotechnology at [redacted] School District during 2017-2021" satisfy the criterion at 8 C.F.R. § 204.5(h)(3)(viii). The Petitioner does not elaborate on how the Director may have erred in concluding that the record did not establish that the Petitioner has performed in a leading or critical role for organizations that have a distinguished reputation.

For a leading role, officers look at whether the evidence establishes that the person is (or was) a leader within the organization or establishment or a division or department thereof. A title, with appropriate matching duties, can help to establish that a role is (or was), in fact, leading. *See 6 USCIS Policy Manual* F App'x, https://www.uscis.gov/policymanual.

The Petitioner does not assert, and the record does not support the conclusion, that he led [redacted] University, or a department thereof, while he was conducting graduate research; or that he led The University of [redacted] or a department thereof, while he worked as a post-doctoral research associate; or that he led the [redacted] School District, or a department thereof, while he was "[t]raining school students in [v]ocational [a]griculture and [b]iotechnology." Therefore, the record does not establish that the Petitioner performed in a leading role at any of the organizations he identified.

For a critical role, we consider whether the record establishes that the person has contributed in a way that is of significant importance to the outcome of an organization or establishment's activities or those of a division or department of the organization or establishment. 6 *USCIS Policy Manual*, *supra*, at F.2 appendix. The Petitioner also does not elaborate how he contributed in a way that is of significant importance to the outcome of any of the referenced organization's activities, or to the outcome of a division or department of any of the referenced organizations. Therefore, the record does not establish that the Petitioner performed in a critical role at any of the organizations he identified. *See id.* Moreover, even if the record established that the Petitioner performed either a leading or critical role at any of the organizations he identified, which it does not, the record does not establish how any of the organizations have a distinguished reputation through documentation of their eminence, distinction, or excellence. *See id.* Because the record does not establish that the Petitioner performed in a leading or critical role for organizations or establishments that have a distinguished reputation, it does not satisfy the criterion at 8 C.F.R. § 204.5(h)(3)(viii).

> *Evidence that the [noncitizen] 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).

In the RFE, the Director informed the Petitioner that the record did not establish that he commanded a high salary or other significantly high remuneration for services, in relation to others in the field, and the Director requested such evidence. In response to the RFE, the Petitioner provided a photocopy of his 2020 IRS Form W-2, Wage and Tax Statement, indicating that his gross annual income was $64,001.45. The Petitioner also submitted information regarding his income in the prior full tax year of 2019, and six paystubs from the beginning of 2021 in response to the RFE. The Petitioner also submitted a copy of an excerpt from an agreement between the [redacted] Public School District #1 and the [redacted] Education Association for the period of 2019-2020, in relevant part setting the salary schedule for full-time teachers of the district. The agreement states that "[t]he minimum salary for teachers employed by the District on a nine month basis is . . . [$]55,450" for the highest level of qualification, "MS+32." The Director acknowledged the information regarding the Petitioner's income; however, the Director noted that "[t]he record contains no objective earnings data demonstrating that you have commanded a high salary or other significantly high remuneration for services, in relation to others in the field," citing *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994); *Grimson v. INS*, 934 F. Supp. 965, 968 (N.D. Ill. 1996); *Muni v. INS*, 891 F. Supp. 440, 444-45 (N.D. Ill. 1995). Because the record did not establish how the Petitioner's income relates to that of others in the field, the Director concluded that the record did not satisfy the criterion at 8 C.F.R. § 204.5(h)(3)(ix).

The extent of the Petitioner's assertions on appeal regarding the criterion at 8 C.F.R. § 204.5(h)(3)(ix) is: "[a]s per the Teachers Union contract for the School District, I drew the highest salaries allowed in the contract based on educational qualification and experience."

The Petitioner's reliance on the above-referenced agreement between the [redacted] Public School District #1 and the [redacted] Education Association for the period of 2019-2020 is misplaced. First, as the Director explained, the record does not contain evidence of the actual salaries earned by others in the field, to which the Petitioner's salary may be compared. Specifically, the record does not contain evidence of what other "vocational agriculture teachers" with "MS+32" qualifications—or any other level of qualification—actually earn, to compare to the Petitioner's income in order to determine

whether he commands a high salary or significantly high remuneration for services, *in relation to others in the field*. 8 C.F.R. § 204.5(h)(3)(ix). Second, the record does not contain a copy of the agreement for the period of 2020-2021, to address the Petitioner's income earned in the autumn and winter of 2020 as reflected in his annual Form W-2 for that year. Third, the Petitioner mischaracterizes the import of the agreement. The copy of the agreement—in its excerpted form—in the record indicates that the Petitioner's income during 2020 was greater than "[t]he minimum salary for teachers employed by the District" for the period of 2019-2020, not that he "drew the highest salaries allowed." On the contrary, the copy of the agreement—in its excerpted form—does not appear to limit what "the highest salaries allowed" may be.

We note that, after the Petitioner filed the appeal, he submitted a copy of an employment offer letter to him from [redacted] University dated December 2022. The offer letter indicates that his position title would be "Scientist III," his employment would begin in February 2023, and his annual salary would be $68,000. However, the offer letter does not elaborate on the job duties of a "Scientist III" and the record does not establish how a salary of $68,000 is a high salary or significantly high remuneration for services, in relation to others in the "Scientist III" field. *See* 8 C.F.R. § 204.5(h)(3)(ix).

Because the record does not satisfy the criteria at 8 C.F.R. § 204.5(h)(3)(ii), (vi), (viii), and (ix), and because the Petitioner does not assert, and the record does not support the conclusion, that the record satisfies the criteria at 8 C.F.R. § 204.5(h)(3)(iii), (vii), or (x), we need not determine whether the record satisfies the criteria at 8 C.F.R. § 204.5(h)(3)(i) or (v) because, even if it did, it would not satisfy at least three criteria at 8 C.F.R. § 204.5(h)(3). Accordingly, we reserve our opinion regarding the criteria at 8 C.F.R. § 204.5(h)(3)(i) and (v). In summation, the record does not satisfy a least three of the criteria at 8 C.F.R. § 204.5(h)(3).

III. CONCLUSION

The Petitioner has not submitted the required initial evidence of either a one-time achievement or evidence that meets at least three of the 10 criteria. As a result, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible). Nevertheless, we have reviewed the record in the aggregate, concluding that it does not support a conclusion that the Petitioner has established the acclaim and recognition required for the classification sought.

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 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; *see also* 8 C.F.R. § 204.5(h)(2).

ORDER: The appeal is dismissed.