U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30470554

Date: APR. 1, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner seeks to classify himself as an individual of extraordinary ability in the sciences. *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 received a one-time achievement of a major, internationally recognized award. The Director further concluded that the record does not satisfy, in the alternative, at least three of the 10 initial evidentiary criteria. The matter is now before us on appeal pursuant to 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.

As noted above, the Director concluded the record does not establish the Beneficiary received a one-time achievement of a major, internationally recognized award. The Director further concluded that the record does not satisfy, in the alternative, at least three of the 10 criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x). Specifically, the Director acknowledged that the record satisfies the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vi); however, the Director concluded that the record does not satisfy the criteria at 8 C.F.R. § 204.5(h)(3)(i), (iii), (v), or (viii). The Petitioner did not specifically address the criteria at 8 C.F.R. § 204.5(h)(3)(ii), (vii), (ix) or (x) at the time of filing the Form I-140, Immigrant Petition for Alien Workers, or in response to the Director's request for evidence (RFE); therefore, the Director did not address those criteria in either the RFE or the decision.

On appeal, the Petitioner reasserts that, in addition to satisfying the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vi), the record satisfies the criteria at 8 C.F.R. § 204.5(h)(3)(i), (iii), (v), and (viii). The Petitioner does not address the criteria at 8 C.F.R. § 204.5(h)(3)(ii), (vii), or (x), thereby waiving those potential criteria. *See, e.g.*, *Matter of M-A-S-*, 24 I&N Dec. 762, 767 n.2 (BIA 2009) (citing *Greenlaw v. U.S.*, 554 U.S. 237 (2008) (upholding the party presentation rule)).

We adopt and affirm the Director's analysis of the criteria at 8 C.F.R. § 204.5(h)(3)(i), (iii), (v), and (viii). *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 that the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted the issue"); *Chen v. INS*, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight circuit courts in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case). The Director provided a detailed analysis of evidence submitted for each of the claimed criteria and discussed how the evidence did not sufficiently demonstrate that the Petitioner met each criterion.

For example, the Director thoroughly explained why the record does not establish the Petitioner has received a lesser nationally or internationally recognized prize or award for excellence in his field of endeavor, as contemplated by the criterion at 8 C.F.R. § 204.5(h)(3)(i). The Director specifically addressed how the record does not establish the specific details pertaining to the criteria for the award in question, whether other candidates were considered for the award, whether the basis for granting the award was excellence in the field of computer science, and similar information. The Director also noted that the Petitioner had not submitted documentary evidence of the award in question, nor an explanation for why that evidence was not offered.

As another example, the Director explained why the record does not establish that materials about the Petitioner, relating to the Petitioner's work in the field for which classification is sought, have been published in professional or major trade publications or other major media, as contemplated by the criterion at 8 C.F.R. § 204.5(h)(3)(iii). The Director noted deficiencies of the publications in question, such as their lack of information regarding their source, their tendency to focus on the publication authors' own work or recent trends rather than being about the Petitioner and his work, and their focus on generalized information.

As a final example, the Director explained why the record does not establish the Petitioner has performed in a leading or critical role for organizations or establishments that have a distinguished reputation, as contemplated by the criterion at 8 C.F.R. § 204.5(h)(3)(viii). The Director acknowledged the Petitioner's work history; however, the Director noted that the Petitioner's work tended to be temporary in nature and his positioning within the various organizations was unexplained. The Director also noted that, regardless of whether the Petitioner may have performed in a leading or critical role, for many of the Petitioner's prior employers the record does not establish whether those organizations or establishments have a distinguished reputation, as required.

The Director thoroughly analyzed the Petitioner's evidence and arguments and provided him with a compete decision reaching the correct conclusion. Based on our de novo review of the record before us, we conclude that the Petitioner does not provide sufficient evidence to overcome the Director's conclusions.

We acknowledge that the Petitioner references on appeal information in the record regarding his salary, apparently to request consideration of the criterion at 8 C.F.R. § 204.5(h)(3)(ix), without specifically asserting that he may be eligible under that criterion. The Petitioner submits, for the first time on appeal, a document he describes as "a salary comparison with average salary in the state of Nebraska," to be considered with a copy of his employment contract, submitted at the time of filing, and a letter regarding a salary increase, submitted in response to the Director's RFE.

We need not—and we do not—accept this evidence submitted for the first time on appeal because the Petitioner was put on notice of the evidentiary requirement by regulation; the Petitioner was given a reasonable opportunity to provide the evidence in question both at the time of filing the Form I-140, Immigrant Petition for Alien Workers, and in response to the Director's RFE; and the evidence in question was reasonably available to the Petitioner both at the time of filing and in response to the RFE. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988); *Matter of Oyeniran v. Holder*, 672 F.3d 800, 808-09 (9th Cir. 2012). We note, however, that even if we were to accept the evidence submitted for the first time on appeal, the record would not establish that the Petitioner has commanded a high salary or other significantly high remuneration for services, in relation to others in the field, as contemplated by the criterion at 8 C.F.R. § 204.5(h)(3)(ix).

In summation, the Petitioner has not established he received a one-time achievement or, in the alternative, evidence that meets at least three of the 10 criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). 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); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015). 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 that 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.