U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

In Re: 33346442

Date: SEPT. 6, 2024

Appeal of Texas Service Center Decision

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

The Petitioner is an entrepreneur 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 the record did not establish that the Petitioner had a major, internationally recognized award, nor did he demonstrate that he 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-step analysis. In the first step, 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). The regulation at 8 C.F.R. § 204.5(h)(4) allows a petitioner to submit comparable material if he or she is able to demonstrate that the standards at 8 C.F.R. § 204.5(h)(3)(i)–(x) do not readily apply to the individual's occupation.

Where a petitioner meets these initial evidence requirements, we then move to the second step to 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, 1121 (9th Cir. 2010) (discussing a two-step 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 has a background in the sale, investment, design and implementation of projects related to housing and other buildings. He has founded multiple companies in his home country and he proposes to continue his work as an entrepreneur in the real estate development field in the United States.

### 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 six of the regulatory criteria. The Director decided that the Petitioner satisfied two of the criteria relating to published material and performing in a leading or critical role, but that he had not satisfied the criteria associated with prizes or awards, membership, original contributions, or high salary or remuneration. On appeal, the Petitioner maintains that he meets the evidentiary criteria the Director denied except for the prizes or awards criterion. After reviewing all the evidence in the record, we come to the same conclusion as the Director.

1. 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 Director determined that the Petitioner did not meet the requirements of this criterion and the Petitioner doesn't contest those findings on appeal. We consider this criterion to be abandoned or waived. *Matter of F-C-S-*, 28 I&N Dec. 788, 789 n.3, 791 n.6 (BIA 2024) (finding issues not challenged on appeal are waived).

2. 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 articles from multiple news sources and the Director determined that the Petitioner met the requirements of this criterion. We will not disturb that conclusion.

3. 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 evidence and claims related to several companies the Petitioner founded. The Director determined that the Petitioner met the requirements of this criterion and we do not disagree with that decision.

4. Evidence that the alien 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 Director determined that the Petitioner did not meet the requirements of this criterion. In arguing his eligibility on appeal, the Petitioner presents new claims that he did not advance before the Director. First, he refers to the USCIS Policy Manual for entrepreneurs and what that resource reflects they can provide as direct evidence under this criterion focusing on outside investment in their companies. *See generally* 6 *USCIS Policy Manual* F.2(B)(1), https://www.uscis.gov/policymanual. Before the Director, the Petitioner only provided profit and loss related information for his companies, with no real data on the types of investment from outside sources. Second, he now also claims he should be able to offer comparable evidence relating to his equity holding in his businesses, as the USCIS Policy Manual also describes as a possibility for entrepreneurs under the comparable evidence regulatory provision. He also did not present this claim to the Director.

Because both the regulation and the Director's request for evidence put the Petitioner on notice and gave him a reasonable opportunity to provide these arguments and this evidence, we will not consider it for the first time on appeal. *See Matter of Furtado*, 28 I&N Dec. 794, 801–02 (BIA 2024) (declining to consider new evidence on appeal when the filing party was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the denial); *see also Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533, 537 (BIA 1988). These are all the claims the Petitioner offers for this criterion on appeal.

Considering this, the Petitioner has not submitted evidence that meets the plain language requirements of this criterion.

5. Documentation of the alien'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 Petitioner provided claims and evidence related to three organizations. The Director determined that the Petitioner did not meet the requirements of this criterion, as these entities did not require outstanding achievements as an essential condition for admission to membership.

This criterion contains several evidentiary elements the Petitioner must satisfy. First, the Petitioner must demonstrate that he/she is a member of an association in his/her field. Second, the Petitioner

must demonstrate both of the following: (1) the associations utilize nationally or internationally recognized experts to judge the achievements of prospective members to determine if the achievements are outstanding, and (2) the associations use this outstanding determination as a condition of eligibility for prospective membership.

On appeal, the Petitioner limits his arguments to one organization, the Bulgarian Investment and Construction Association (BISA) and he points to their Articles of Association as the primary supporting evidence. As a result, he has abandoned his claims relating to the other two entities he claimed before the Director. *F-C-S-*, 28 I&N Dec. at 789 n.3, 791 n.6.

Here, the Petitioner asserts BISA requires outstanding achievements of its regular members based on the requirement that its regular membership level candidates must provide evidence of an investment in or have constructed and put into operation, a building comprised of an area that is one thousand square meters or more in size accompanied by a certificate that the "trader" is not bankrupt and is not subject to insolvency proceedings.

But the Petitioner does not describe what evidence supports his assertion that this is an outstanding achievement. These unsupported statements have little evidentiary value and will not satisfy the Petitioner's burden of proof. *See Matter of Mariscal-Hernandez*, 28 I&N Dec. 666, 673 (BIA 2022); *see also Matter of Azrag*, 28 I&N Dec. 784, 787 (BIA 2024). The Petitioner offers other external material relating to BISA, but none is as salient as the organization's own stated requirements. And the Petitioner has not demonstrated that its requirements constitute outstanding achievements as a condition of its regular members.

Therefore, the Petitioner has not submitted evidence that meets the plain language requirements of this criterion.

6. 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 they rise to the level of major significance in the field as a whole, rather than to a project or to an organization. *See Amin*, 24 F.4th at 394 (citing *Visinscaia v. Beers*, 4 F. Supp. 3d 126, 134 (D.D.C. 2013)). The regulatory phrase "major significance" is not superfluous and, thus, it has some meaning. *Nielsen v. Preap*, 586 U.S. 392, 415 (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.

The Petitioner proposes he will continue his work as an entrepreneur in the real estate development field. As a result, he must demonstrate the requisite level of contributions in the real estate development field. The Director determined that the Petitioner did not meet the requirements of this criterion. After discussing some of the recommendation letters he offered, the Director indicated that

"there is no doubt the beneficiary provides valuable knowledge and success to the field; however, his work has not made an original major significant contribution to the field." Also relating to the letters, the Director noted they lacked "specificity regarding how his achievements have affected the field or how the asserted achievements are being reproduced within the field. Further, the petitioner has not established how others emulate his techniques or have *widely* applied his results."

Appealing that determination, the Petitioner points to one of the letters the Director discussed from [redacted] The Petitioner's appeal brief quotes from the same portion of Mr. [redacted] letter that the Director quoted and discussed in the denial decision. Mr. [redacted] stated:

> While many of his projects have received national and international awards and/or nominations for innovative design and unmatched quality, one of his most notable contributions to the Bulgarian economy, as well as to the the [sic] growth and popularisation of Bulgarian tourism and residential properties market, is his outstanding contribution in connection with market research, analysis, and input in connection with major legislative initiatives. His input, opinion letters, and tireless advocacy for raising the standards in real estate development, as well as balancing the needs of the respective districts and municipalities with the market demands and international standards, have not only made him a respected leader in the real estate development field but a major contributor to many key legislative initiatives in Bulgaria.

The Petitioner then draws some tangentially connected aspects relating to BISA having an effect in the industry, but we are not prepared to make the same logical leap without more cardinal evidence adequately attributing those improvements to market research and analysis, and to legislation initiatives. We agree with the Director that while the Petitioner has attained a certain level of achievement in his home country relating to real estate development, the record simply does not support the contention that those have resulted in a sufficient influence within the field. And having the ability to influence a legislative body is distinctly different from exerting one's influence that not only resulted in legislative changes, but also changes that had a significant impact in the real estate development field.

The Petitioner closes his legislative improvement arguments noting he was the point of contact at BISA in connection with a legislative proposal. He generally points to "letters" in the record to bolster his claims, without identifying any particular author or set of authors supporting his contention that they explain the nature and significance of his contributions. The Petitioner alleges the Director did not give the evidence its proper weight, overlooked a significant portion of the evidence, and provided a general and unfounded explanation of why he did not fulfill this criterion's requirements.

Considering the almost 800-page record contains numerous letters throughout, it is the Petitioner's responsibility to identify the specific evidence he references to support his claims. It is the filing party's duty and burden to inform us of what errors the lower entity committed and how their claims and evidence satisfy which eligibility requirements. *Nolasco-Amaya v. Garland*, 14 F.4th 1007, 1012–13 (9th Cir. 2021) (citing *Toquero v. INS*, 956 F.2d 193, 196 n.4 (9th Cir. 1992)). Commensurate with that burden is the responsibility for explaining the significance of proffered evidence. *Repaka v. Beers*, 993 F. Supp. 2d 1214, 1219 (S.D. Cal. 2014). Filing parties should not submit large quantities of evidence without notifying the appellate body of the specific documentation

that corroborates their claims within such large quantities. Doing so places an undue burden on the appellate body to search through the documentation without the aid of the filing party's knowledge. *Nolasco-Amaya v. Garland*, 14 F.4th at 1012–13.

Even though the Petitioner has been successful in his endeavors, we conclude he has not shown his work has been unusually influential, widely applied by the field, or has otherwise risen to the level of contributions of major significance.

## 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 his 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.