U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33360024

Date: SEPT. 11, 2024

Appeal of Texas Service Center Decision

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

The Petitioner is an athlete 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 is a professional pickleball player in the United States on a nonimmigrant visa for internationally recognized athletes.

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 initially claimed he met all ten of the regulatory criteria but retreated from some of those declarations when responding to the Director's request for evidence (RFE). The Director decided that the Petitioner only satisfied the prizes or awards criterion but not the remaining criteria. After reviewing all the evidence in the record, we conclude that he has not demonstrated he is eligible for this immigration benefit.

> *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).

Based on the Petitioner's claims and evidence, the Director determined that he met the requirements of this criterion, and we agree.

> *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's claims and evidence under this requirement related to his televised matches, an interview on YouTube, and an article on a website. The Director determined that the Petitioner did not meet the requirements of this criterion.

The Director indicated in the denial that without transcripts they are unable to determine whether the YouTube interview was about the Petitioner. While the USCIS Policy Manual lists one possible form of evidence as transcripts of professional or major audio or video coverage of the person and the person's work, the Petitioner did not offer transcripts of the claimed interview and within the appeal brief states he is "unable to provide documentation of this other than the link." We note a similar shortcoming relating to the Petitioner's televised matches on CBS Sports and ESPN+.

On appeal the Petitioner identifies several new forms of evidence. However, as this material postdates the petition filing date it will not factor into our analysis relating to this petition he filed in December of 2022. And finally, he discusses an article that appeared on a ranking system's website. But he did not provide evidence to reflect this is one of the publication types that the regulation requires (a professional or major trade publication or other major media).

We conclude that the Petitioner has not submitted evidence that meets the plain language requirements of this criterion.

> *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).

Within the appeal, the Petitioner presents the claims he offered to the Director, that this criterion's requirements are applicable to his occupation and are typically generated through tournament winnings, royalties, sponsorships, and other compensation. The Director did not directly address whether the Petitioner fulfilled this criterion's requirements.

The plain language of this criterion requires a comparison against "others in the field" and the Petitioner must present evidence of objective earnings data showing that he has commanded a "high salary" or "significantly high remuneration" in comparison with those performing similar work during the same time period. *See Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994) (considering professional golfer's earnings versus other PGA Tour golfers).

Although the Petitioner's evidence contains some documentation relating to tournament prize money and sponsorships, he does not identify what evidence we should compare to his competitive winnings or endorsement agreements, and we were unable to locate evidence in which to compare to his own. As this criterion's plain language mandates that type of material, the Petitioner has not submitted evidence that meets the regulation's requirements.

> *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 Director determined that the Petitioner did not meet the requirements of this criterion. On appeal, the Petitioner claims his professional rankings and his pickleball paddle sponsorships qualify him under this regulatory requirement. Contributions of major significance connotes that the Petitioner's work has significantly impacted the field. *See* 8 C.F.R. § 204.5(h)(3)(v); *see also Amin*, 24 F.4th at 394 (citing *Visinscaia*, 4 F. Supp. 3d at 134. Lacking is an explanation of how either of the Petitioner's claims amounts to an original contribution to the field, much less how they have resulted in an effect that is of major significance in his field. The Petitioner has not explained how performing well in his sport equates to an impact in the field that is of major significance.

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

> *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).

A leading role should be apparent by its position in the overall organizational hierarchy and the role's matching duties. A critical role should be apparent from the Petitioner's impact on the entity's activities. The Petitioner's performance in any role should establish whether it was leading or critical for organizations, establishments, divisions, or departments *as a whole*. Ultimately, the leading or the critical role must be performed on behalf of the organization, establishment, division, or department that enjoys a distinguished reputation, rather than for a unit subordinate to these listed entities. *See generally* 6 *USCIS Policy Manual* F.2(B)(1), https://www.uscis.gov/policymanual.

USCIS policy reflects that organizations, establishments, divisions, or departments that enjoy a distinguished reputation are "marked by eminence, distinction, or excellence." *Id.* (citing to the definition of *distinguished*, *Merriam-Webster*, https://www.merriam-webster.com/dictionary/distinguished). The Petitioner must submit evidence satisfying all of these elements to meet the plain language requirements of this criterion.

Before the Director, the Petitioner presented various claims relating to this criterion. A portion of those claims focused on the possibility of pickleball as a future Olympic sport, and other claims related to the Petitioner's success at major tournaments as comparable evidence. The Director determined that the Petitioner did not meet the requirements of this criterion noting the RFE response was not adequately crafted to clearly convey the Petitioner's claims.

Now on appeal, the Petitioner's brief discusses several organizations or establishments but it never gets to the point where it presents a claim relating to any one entity. The brief then transitions to a broad set of claims of the criteria the Petitioner states do not readily apply to his occupation and should be considered as comparable evidence under 8 C.F.R. § 204.5(h)(4). As he did before the Director, the Petitioner points to a letter from a professional pickleball player to support his contention that this criterion is not readily applicable to his occupation.

The USCIS Policy Manual offers the guidelines we follow for those who wish to claim comparable evidence and it provides:

> A general unsupported assertion that the listed evidentiary criterion does not readily apply to the petitioner's occupation is not probative. Similarly, general claims that USCIS should accept witness letters as comparable evidence are not persuasive. However, a statement from the petitioner can be sufficient to establish whether a criterion is readily applicable if that statement is detailed, specific, and credible.
>
> Although officers do not consider comparable evidence where a particular criterion is readily applicable to the person's occupation, a criterion need not be entirely inapplicable to the person's occupation. Rather, the officer considers comparable evidence if the petitioner shows that a criterion is not easily applicable to the person's job or profession.

See generally 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1). But under the leading or critical role regulation, it is not apparent that its requirements are not readily applicable to his occupation. Although the Petitioner claims—and the professional pickleball player's letter implies—that pickleball doesn't include any organizations or establishments that could serve to qualify under this criterion, he has not sufficiently demonstrated that this criterion's requirements are not readily applicable to his occupation. As a result, we will not consider his "success at major tournaments as evidence of his performance of a leading role in an organization of distinguished reputation."

The Petitioner has not submitted evidence that meets the plain language requirements of this criterion, nor has he shown we should consider his evidence as comparable evidence.

> *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).

Although the Petitioner submits his professional rankings as comparable to the membership criterion, he presented this same eligibility claim as direct evidence under a separate criterion. Consistent with the regulatory requirement for evidence that meets three separate criteria, evidence relating to or even meeting one criterion is not presumptive comparable evidence to a different criterion. *See Kazarian*, 596 F.3d at 1122 (upholding our determination not to consider conference presentations of scholarly findings—evidence directly related to one criterion— as comparable evidence under the display of the foreign national's work at artistic exhibitions or showcases regulation). The Petitioner also does not sufficiently explain how his rankings compare to this criterion's elements.

Consequently, the Petitioner has not submitted evidence that meets the plain language requirements of this criterion, nor has he demonstrated we should consider his claims as comparable evidence.

> *Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.* 8 C.F.R. § 204.5(h)(3)(x).

This criterion requires a petitioner to establish eligibility through volume of sales or box office receipts as a measure of his or her commercial success in the performing arts. The USCIS Policy Manual states: "The evidence must show that the volume of sales and box office receipts reflect the person's commercial success relative to others involved in similar pursuits in the performing arts." *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1).

The Petitioner advances claims of his general prominent victories in the sport as comparable evidence in the place of direct evidence. But even if we were to consider the Petitioner's claims as comparable to this criterion's requirements, one element requires him to demonstrate his prominent victories through a form of evidence comparable to box office receipts or record, cassette, compact disk, or video sales. But the record lacks sufficient evidence in which to compare to the Petitioner's unspecified prominent victories.

The record does not support the Petitioner's claims that he has submitted evidence that should serve as comparable evidence for this criterion.

B. We Reserve any Remaining Issues

We conclude that although the Petitioner satisfies the prizes or awards criterion, he does not meet any of the remaining claimed criteria. While he argues and submits evidence for one additional criterion on appeal relating to the display of his work at 8 C.F.R. § 204.5(h)(3)(vii), it is unnecessary that we make a decision on this additional ground because he cannot numerically meet the required number of criteria. As the Petitioner cannot fulfill the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3), we reserve the remaining issue. *Patel v. Garland*, 596 U.S. 328, 332 (2022) (citing *INS v. Bagamasbad*, 429 U.S. 24, 25–26 (1976) (finding agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision)); *see also see also Matter of M-R-M-S-*, 28 I&N Dec. 757, 764 (BIA 2023) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

III. CONCLUSION

Although we acknowledge the Petitioner is a professional in his sport who has won multiple championships, if he does not present his claims and evidence in a manner that conforms to the regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x) or as comparable evidence at 8 C.F.R. § 204.5(h)(4), we cannot conclude that he is a competitor of extraordinary ability. Those regulations and the USCIS Policy Manual provide the methods for those believing they have an extraordinary ability to prove it. But despite the Petitioner's counsel's knowledge of those authorities that explain how they can be utilized, they never followed that lead. "[O]ne can lead a horse to water, but cannot always make [them] drink." *Toscano v. Chandris, S.A.*, 934 F.2d 383, 387 n.3 (1st Cir. 1991).

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. *Price*, 20 I&N Dec. at 954. 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.