U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF S-C-S-

DATE: DEC. 9, 2015

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, an individual, seeks classification as a foreign national "of extraordinary ability" in science. *See* Immigration and Nationality Act (the Act) § 203(b)(1)(A); 8 U.S.C. § 1153(b)(1)(A). The Director, Texas Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

The classification the Petitioner seeks makes visas available to foreign nationals who can show extraordinary ability through sustained national or international acclaim and achievements that have been recognized in the area of expertise through extensive documentation. The Director determined that the Petitioner satisfied the initial evidence requirements set forth at 8 C.F.R § 204.5(h)(3), but that he did not demonstrate eligibility in a final merits determination.

I. LAW

Section 203(b) of the Act states in pertinent part:

> (1) Priority workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):
>
> (A) Aliens with extraordinary ability. -- An alien is described in this subparagraph if –
>
> (i) the alien 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 alien seeks to enter the United States to continue work in the area of extraordinary ability, and
>
> (iii) the alien'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 regulation at 8 C.F.R. § 204.5(h)(3) sets forth two different methods by which a petitioner can demonstrate extraordinary ability sustained by national or international acclaim and recognition of achievement in the field. First, a petitioner can submit a one-time achievement (that is, a major, internationally recognized award). Second, a petitioner can meet at least three of the ten categories of evidence listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

Satisfaction of the initial requirements does not however, in and of itself establish eligibility for this classification. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the evidence is first counted and then, if satisfying the required number of criteria, considered in the context of a final merits determination). *See also Rijal v. USCIS*, 772 F.Supp.2d 1339 (W.D. Wash. 2011) (affirming our proper application of *Kazarian*), *aff'd*, 683 F.3d. 1030 (9th Cir. 2012); *Visinscaia v. Beers*, 4 F.Supp.3d 126, 131-32 (D.D.C. 2013) (finding that we appropriately applied the two-step review); *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (holding that the "truth is to be determined not by the quantity of evidence alone but by its quality" and that we examine "each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true").

II. ANALYSIS

A. Evidentiary Criteria

The Director found the Petitioner satisfied three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

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.

The Director found the Petitioner met this criterion. The Petitioner submitted evidence showing that he evaluated dissertations as a post-doctoral researcher and rated contract bids as an engineer at [redacted] As a result, we agree that the Petitioner has met the plain language requirements of this criterion.

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.

The Director found the Petitioner satisfied this criterion. The Petitioner submitted documentation to show that he co-authored an article published in the [redacted] in 2000 as well as a presentation published in the proceedings of a conference. As a result, we agree that the Petitioner has met 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.

The Director found the Petitioner met this criterion by virtue of his position as a senior engineer at the electric company In this case, the Petitioner demonstrated that is a company with a distinguished reputation and that it has employed him as a senior engineer. In addition, the Petitioner has played a critical role on several projects leading to cost savings and improved reliability for the company. Accordingly, the Petitioner has satisfied this criterion.

B. Summary

The Petitioner has satisfied at least three of the regulatory criteria.

C. Final Merits Determination

In accordance with the *Kazarian* opinion, the next step is a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor," 8 C.F.R. § 204.5(h)(2); and (2) "that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." 8 C.F.R. § 204.5(h)(3). *See Kazarian*, 596 F.3d at 1119-20.

The Petitioner submitted several documents he received recognizing his five-year benchmark as a employee. The Petitioner also provided a certificate from for participating in the as well as a certificate of attendance from the for successfully completing the course, These letters and certificates are not nationally or internationally recognized awards for excellence such that they might qualify under the awards criterion at 8 C.F.R § 204.5(h)(3)(i). Regardless, they are not indicative of the Petitioner's outstanding achievements in the field commensurate with the top of the field; rather they are recognition of his continuous employment or participation in events. The Petitioner is an engaged employee of a large corporation, however, such internal recognition from his employer does not suggest that he is one of the few at the very top of his field of endeavor.

The Petitioner provided evidence of his membership in several trade organizations. One such group is the On appeal, the Petitioner focuses on the fact that membership is "limited." According to the print-out from the organization's website, membership is acquired through competence in one of the designated fields of engineering, computer science, information technology, physical science, biology and medical science, mathematics, technical communication, education management, and law and policy. While limited to those with education and experience in the field, these requirements are not indicative of a membership that is acclaimed or at the top of the field. The Petitioner also submitted documentation of his membership in the Bangladesh. The constitution for this organization similarly confirmed that

membership requirements include a minimum age, active involvement in the field, and technical proficiency or degree acquisition. Lastly, the [redacted] Australia, elected the Petitioner to membership. A print-out from the association's website indicated that membership is open to those who have a qualifying degree in Engineering. As such, these memberships do not meet the membership criterion at 8 C.F.R § 204.5(h)(3)(ii). Regardless, although the Petitioner's membership in these organizations confirms his activity within his profession, the membership standards generally require only a certain level of education or training. There is no information that membership is contingent on extraordinary ability in the field or that it garners the Petitioner national or international acclaim. As a result, these memberships do not demonstrate that the Petitioner is at the very top of his field of endeavor.

With respect to the judging criterion at 8 C.F.R § 204.5(h)(3)(iv), the Petitioner asserts on appeal that the Director concluded that the Petitioner met that criterion because he was chosen as a judge based on his expertise and contributions. The Director's decision, however, did not suggest that the Petitioner met this criterion for those reasons. The plain language of the criterion requires only that the Petitioner have participated as a judge of the work of others. The nature of that judging is a valid issue within the final merits determination. *Kazarian*, 596 F.3d at 1122.

The Petitioner submitted a letter dated 1999 from the head of the [redacted] at [redacted] The letter indicated that, as a post-doctoral researcher, the Petitioner reviewed and judged the theses of Ph.D. candidates and wrote summaries of the theses for the Thesis Board. While such work qualifies as judging others, the Petitioner does not offer information to corroborate that this activity is commensurate with judging by those at the very top of the field, such as the typical experience required for or the acclaim garnered by theses evaluations. The record also contains examples of contract bid evaluations the Petitioner completed for [redacted] Although these meet the plain language requirement for judging others in the field, the Petitioner does not provide materials demonstrating that rating bids for his own employer is reflective of extraordinary ability, such as, for example, information regarding how many [redacted] employees evaluate bids or the qualifications required to be entrusted with this role. We also note that each evaluation form requires signatures from not only the Petitioner as the preparer, but also two other individuals who must approve his recommendation. The Petitioner's responsibilities as an evaluator confirm he is a trusted and knowledgeable [redacted] employee. They do not, however, show that the Petitioner has reached the very top of his field of endeavor or that his review duties garnered him any recognition outside of the company that employed him.

The Petitioner provided numerous references from coworkers and others in the field discussing his contributions. When describing the Petitioner's achievements and abilities, most of the letters contained the following identical language:

> . . . These methods and algorithms form the basis for creation of distributed control systems, enabling to greatly increase economical [*sic*] efficiency and security of functioning of large power systems. His articles are considered to be a significant

> contribution to the theory of large technical systems modeling and control because new approach [*sic*] to solution of these problems was proposed in these publications.

Although the Director cited the issue of the identical language in his denial, the Petitioner does not address it on appeal. The repeated text comprises the substantive portion of most letters addressing the Petitioner's accomplishments and his impact on the field. The references did not provide the reasoning behind the recommenders' conclusions regarding the Petitioner's impact on the field. USCIS need not accept primarily conclusory assertions. *1756, Inc. v. U.S. Att'y Gen.*, 745 F.Supp. 9, 15 (D.C. Cir. 1990). As additional evidence of the Petitioner's contributions, he relied on his patent and citations to his scholarly articles. The citation to his patent is from a co-inventor and his articles, and does not demonstrate a wider impact in the field. Similarly, as discussed below, the citations of his article and presentation are primarily from his coauthors and co-inventor. The Petitioner's patent and citation record are not only not indicative of contributions of major significance in the field pursuant to 8 C.F.R § 204.5(h)(3)(v), they are not commensurate with someone at the very top of the field.

The Petitioner also provided documentation sufficient to establish that he has authored a scholarly research paper in a professional journal pursuant to 8 C.F.R § 204.5(h)(3)(vi). The Petitioner co-authored a paper entitled, [redacted] published in [redacted] in 2000. According to the submitted Google Scholar print-outs, this article has been cited eight times, seven of which are attributable to the Petitioner's co-author. Google Scholar also notes that the Petitioner presented a paper at a conference that has been cited five times, all five of which are by the Petitioner's co-author. While citations are not necessary to meet the scholarly articles criterion, the nature of the citations may be a relevant factor in the final merits determination. *Kazarian*, 596 F.3d at 1122. Here, the Petitioner's single citation from independent members of his field is not commensurate with recognition beyond his immediate circle of collaborators.

With respect to the Petitioner's role for [redacted] the Petitioner asserts on appeal that [redacted] hired the Petitioner "due to his success and due to his expertise in the field." [redacted] Vice President of [redacted], stated that the Petitioner has been a permanent employee of [redacted] since 2007, and that "[the Petitioner] is one of my model engineers who is dependable and can be trusted to deliver on a consistent basis." He further described the Petitioner's involvement with a particular project:

> [The Petitioner] has been intimately involved in an important and complex relay protection upgrade project for the past five years. This is a high visibility multiyear project where we are committed to spend upwards of $8 to $10M dollars a year . . . [The Petitioner] has a lead role in ensuring this project is successful from inception, to execution and commissioning of these complex systems.

With respect to the relative importance of the Petitioner's project at [redacted] explained that "[redacted] is jointly responsible for approximately $500M of Capital upgrades each

year and close to $700M in O&M expenses in the various organizations in [redacted]," whereas the Petitioner's project required a commitment of only eight to ten million dollars.

According to the Department of Labor's Occupational Outlook Handbook (OOH), electrical engineers typically do the following:

- Design new ways to use electrical power to develop or improve products,
- Do detailed calculations to develop manufacturing, construction, and installation standards and specifications,
- Direct manufacturing, installing, and testing of electrical equipment to ensure that products meet specifications and codes,
- Investigate complaints from customers or the public, evaluate problems, and recommend solutions, and
- Work with project managers on production efforts to ensure that projects are completed satisfactorily, on time, and within budget.

See http://www.bls.gov/ooh/architecture-and-engineering/electrical-and-electronics-engineers.htm#tab-2. We do not dispute statements that the Petitioner is a talented and valued employee at a large, distinguished company. The evidence provided, however, is consistent with a competent electrical engineer and does not demonstrate that his role is representative of being at the top of the field or has garnered him national acclaim or any recognition beyond his employer.

On appeal, the Petitioner asserts that the Director did not consider the Petitioner's salary in the United States. As evidence of his salary pursuant to 8 C.F.R § 204.5(h)(3)(ix), the Petitioner provided a letter dated June 21, 2012, from a senior specialist in Human Resources for [redacted] indicating that the Petitioner will be employed for a three year period beginning July 2, 2012, for which he will be paid $90,100 annually. On appeal, the Petitioner states that he is currently making $96,500 annually and that the median pay for similarly situated individuals is $89,630. The Petitioner does not supply documentation to corroborate a raise. Regardless, the Petitioner asserts a salary of approximately eight percent more than the median wage. A salary slightly above the midpoint in the field does not support a claim of extraordinary ability.

Finally, the Petitioner submitted evidence of his professional licenses. Notably, a license is evidence relating to individuals of exceptional ability under section 203(b)(2) of the Act, a lesser classification than the one the Petitioner seeks. 8 C.F.R § 204.5(k)(3)(ii)(C). Specifically, the Petitioner is licensed as a [redacted] The print-out from the association's website stated that, in order to obtain a license, an applicant must: 1) be 18 years of age; 2) be of good character; 3) hold an undergraduate engineering degree; 3) demonstrate work experience of at least 48 months, at least 12 in Canada; and 4) successfully complete a professional practice examination. Taken together, the requirements imposed by [redacted] ensure licensees are qualified and competent members of the engineering field. The Petitioner's license likewise signals that he is a qualified engineer. It does not, however, speak to his ability relative to the field as a whole. Similarly, the Petitioner provided documentation showing the [redacted] Buildings office approved his application to become

a master electrician. The letter contained the Petitioner's approval date, July 24, 2014, which is after the filing of the instant petition on April 18, 2014. Eligibility must be established at the time of filing. 8 C.F.R. § 103.2(b)(1) & (12). However, even if the Petitioner had acquired this license prior to filing, it would not be indicative of extraordinary ability. The requirements for the license similarly require a combination of education, training, experience, and test results. The Petitioner does not demonstrate that acquiring the license is limited to only those at the very top of the field of endeavor or that licensees enjoy national or international acclaim.

For the reasons identified above, the totality of the evidence does not support a finding that the Petitioner is an individual of extraordinary ability in his field. Although the Petitioner has demonstrated that he is an educated and successful engineer, the documentation provided does not indicate he has risen to the very top of his field of endeavor.

III. CONCLUSION

The documentation submitted does not show that the Petitioner has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of his field of endeavor. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the Petitioner's burden to establish eligibility for the immigration benefit sought. § 291 of the Act, 8 U.S.C. § 1361. Here, the Petitioner has not met that burden.

ORDER: The appeal is dismissed.

Cite as *Matter of S-C-S-*, ID# 14723 (AAO Dec. 9, 2015)