U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF N-V-D-

DATE: AUG. 23, 2016

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, an options[1] market consultant and educator, 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, Texas Service Center, denied the petition. The Director concluded that the Petitioner had not satisfied the initial evidence requirements of 8 C.F.R. § 204.5(h)(3), which necessitates either 1) documentation of a one-time major achievement, or 2) materials that meet at least three of the ten regulatory criteria listed under 8 C.F.R. § 204.5(h)(3)(i)-(x).

The matter is now before us on appeal. In his appellate brief, the Petitioner maintains that the Director erred in finding he did not meet at least three of the ten regulatory criteria. In addition, he states that he has demonstrated eligibility for the extraordinary ability classification.

Upon *de novo* review, we will dismiss the Petitioner's appeal.

I. LAW

The Petitioner may demonstrate his extraordinary ability through sustained national or international acclaim and achievements that have been recognized in his field through extensive documentation. Specifically, section 203(b)(1)(A) of the Act states:

> 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

[1] The U.S. Securities and Exchange Commission provides that "[o]ptions are contracts giving the purchaser the right to buy or sell a security, such as stocks, at a fixed price within a specific period of time." *See* Fast Answers, *U.S. Securities and Exchange Commission*, http://www.sec.gov/answers/options.htm (last visited July 12, 2016). A copy of the webpage has been printed and incorporated into the record of proceedings.

> 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 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 his achievements in the field through a one-time achievement (that is a major, internationally recognized award). If he does not submit this documentation, then he must provide sufficient qualifying evidence that meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

Satisfaction of at least three criteria, however, does not, 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 documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011), *aff'd*, 683 F.3d 1030 (9th Cir. 2012); *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 U.S. Citizenship and Immigration Services (USCIS) examines "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"). Accordingly, where a petitioner submits qualifying evidence under at least three criteria, we will determine whether the totality of 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.

II. ANALYSIS

On appeal, the Petitioner acknowledges that he has not submitted documentation of a one-time achievement, or evidence of a major, internationally recognized award at a level similar to that of the Nobel Peace Prize. In addition, the record does not establish that he meets at least three of the ten regulatory criteria listed under 8 C.F.R. § 204.5(h)(3)(i)-(x). As he has not satisfied the initial evidence requirements, we will dismiss the appeal.

A. Evidentiary Criteria

> *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.*

The Director found that the Petitioner did not meet this criterion. On appeal, the Petitioner does not challenge the Director's conclusion. The record supports the Director's finding. The Petitioner passed a number of standardized examinations in his field; however, these activities do not constitute membership in an association. In addition, although the Director indicated that the Petitioner was a member of the [redacted] and a registrant of the [redacted] a letter from [redacted] the Petitioner's former employer, stated that the firm, not the Petitioner, was a member or registrant of these organizations. Accordingly, the Petitioner has not met this criterion.

> *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.*

On appeal, the Petitioner maintains that he meets this criterion because he "has individually performed, led and judge[d] the work of others in seminars, open houses, workshops and study sessions with an international audience in the subject of the U.S. Options Market." The Petitioner has submitted documentation showing that he has presented in seminars, taught classes, participated in open houses, and conducted workshops and study sessions on topics relating to the options market. While the record demonstrates his involvement in these activities, it does not establish that he has judged others' work.

The Petitioner stated that, during the open houses, he "judge[d] the work of attendees, the different ways in which they operate[d] the market, and in addition g[ave] specific indications to improve the approach of different participants." The record does not, however, substantiate these claims. In his initial filing, the Petitioner discussed in detail these educational activities. He indicated that during these events he explained "the theory of the U.S. Options Market," "Options uses, Options strategies and advanced Options Theory." The promotional materials showed that these sessions aimed to educate and provide insights to those interested in trading in the options market. The transcripts of online chats revealed that the Petitioner answered attendees' questions and offered his suggestions on trading options. They did not, however, show that he judged the work of others. Without supporting documentation, the Petitioner's statement is not sufficient for the purposes of meeting his burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Assoc. Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). Accordingly, he does not meet this criterion.

> *Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.*

On appeal, the Petitioner maintains that he meets this criterion because he authored an options market manual, in both English and Spanish, and "made important contributions to the U.S. Capital Market by actively enacting its importance and advantages to the investing community in Colombia, the Hispanic audience, and also to Europeans and Americans themselves." The evidence does not demonstrate that the Petitioner has made original contributions of major significance in the field.

To meet this criterion, a petitioner's contributions must be both original and of major significance in the field. 8 C.F.R. § 204.5(h)(3)(v). The term "original" and the phrase "major significance" are not superfluous and, thus, have some meaning. *Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F. 3d 28, 31 (3d Cir. 1995), *quoted in APWU v. Potter*, 343 F.3d 619, 626 (2d Cir. 2003). The plain language of the criterion dictates that a petitioner's contributions must be original, such that he is the first person or one of the first people to have done the work in the field, and that his contributions must be of major significance in the field, such that they significantly advanced or impacted the field as a whole. Regardless of the field, the phrase "contributions of major significance in the field" requires substantiated impacts beyond one's collaborators, employer, clients or customers. *See Visinscaia*, 4 F. Supp. 3d at 134-35 (upholding a finding that a ballroom dancer had not met this criterion because she did not demonstrate her impact in the field as a whole).

The Petitioner submitted an English and a Spanish version of an options market manual, indicating that the manual was for an "Options Market Course by [the Petitioner]." This work was not published and appeared to be a PowerPoint presentation that the Petitioner offered during his seminars or other related events. The record lacks evidence showing that the manual was of "major significance" in the field. [redacted] a professor at the [redacted] [redacted] referring to the Spanish version of the manual, stated that the Petitioner "wrote a textbook about the Options market," in which "he explain[ed] to his students in his courses and seminars quantitative and analytical tools necessary to address advanced topics related to the U.S.A. Options Market." Neither Professor [redacted] nor any other reference discussed how the manual influenced the field as a whole at a level consistent with a finding of "major significance." The Petitioner has not presented materials on the field's reception of his work, or proof that the manual significantly advanced or impacted the field.

Similarly, although the Petitioner has engaged in educational and information sharing sessions, such as seminars, open houses, workshops and study groups, he has not demonstrated that these activities were of "major significance in the field." Professor [redacted] indicated that the Petitioner, as an educator in the options market, has made "important contributions" to individuals who attended his seminars and related sessions. However, the plain language of this criterion requires a showing of "contributions of major significance in the field," which necessitates evidence that confirms impacts beyond the Petitioner's collaborators, employer, clients or customers. *See Visinscaia*, 4 F. Supp. 3d at 134-35. [redacted] an author, educator, and entrepreneur, provided that "[t]he work of [the Petitioner] is very important promoting and educating investors all over the world in the field of the

U.S. Options Market." But neither Professor nor discussed details that support a claim of the Petitioner's influence on the entire field. As a result, the record lacks sufficient corroborating evidence establishing the Petitioner's major significance in the field.

Many of the references commented on the Petitioner's knowledge on the options market, but they did not identify the Petitioner's original contributions of major significance in the field. For example, an investment desk manager at an investment bank in Colombia, stated that the Petitioner "is known and sought after for his outstanding and extensive ability in the Options Financial Market." a manager at provided that the Petitioner "is the person who has the expertise to turn to, if you want to learn how to invest in the market in the United States." the vice president of sales at offered that, in Colombia, the Petitioner is "one of the most knowledgeable in the U.S. options financial market." a manager at wrote that the Petitioner is the "most knowledgeable person in Colombia in regards to the United States' Options Markets" and he "trains financial professionals" from different parts of the world. an export buyer at said that the Petitioner is "very well known as an expert in the field, so people try to get his advice even out of working hours." an advisor deputy minister of foreign affairs in the Ministry of Foreign Affairs of Colombia, indicated that he had asked the Petitioner for investment advices and that the Petitioner is "the best financial consultant and educator . . . on investing in the United States market."

Assuming these individuals' assessments of the Petitioner's knowledge were accurate, they did not address the plain language requirements of this criterion. Being experienced or knowledgeable in a field is not the same as making original contributions of major significance. Without substantiated explanations of how the Petitioner has made such contributions, the complimentary reference letters are insufficient to meet this criterion. *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009), *aff'd in part*, 596 F.3d 1115 (9th Cir. 2010) (Vague, solicited letters from colleagues that do not specifically identify contributions or provide specific examples of how those contributions influenced the field are insufficient to meet this criterion.). Accordingly, the Petitioner has not shown he meets the plain language 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.*

On appeal, the Petitioner states that he "has developed an Options Market Manual that contains all the important information for understanding the U.S. Options Capital Market." He has not specified which criterion this satisfies. To the extent he offers it to meet the criterion relating to the authorship of scholarly articles, he has not shown that his manual is published. Rather, the manual is a teaching aid for his seminars and related events. As the Petitioner has not established that the manual appeared in professional or major trade publications or other major media, he has not satisfied this criterion.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.

The Petitioner maintains that he meets this criterion because of positions he held in and As supporting evidence, he has submitted letters from his former and current employers, and materials about these entities. The reference letters, together with other documentation in the record, do not establish that he meets this criterion.

The plain language of the criterion requires a petitioner to illustrate he has performed a leading or critical role for qualifying organizations. A leading role should be apparent based not only on the petitioner's title but his duties associated with the position. A critical role should be evident from the petitioner's impact on the organization or establishment as a whole. To show his role in an organization or establishment, the petitioner may submit an organization chart demonstrating how his role fits within the hierarchy of the organization or establishment.

The Petitioner was an options broker for According to the president of the firm, the Petitioner's work was "outstanding" and he had "a leading role in his position developing activities and tasks way beyond his normal responsibilities." indicated that the Petitioner was "of significant importance to [the] organization" and that his "contributions to [were] highly valued."

Despite the material regarding the Petitioner's role with the organization, the record lacks sufficient evidence showing that has a distinguished reputation. indicated that the company is a member of the a registrant of the and authorized to trade and offer investment services to its clients in the futures and options markets. The Petitioner has submitted promotional and outreach materials explaining the company's investment strategies. He has not, however, presented documentation on the firm's reputation.

The Petitioner stated that is an "introducing broker for otherwise known as He noted that "has client accounts and clears Options trades through He submitted documentation relating to operation in the commodities, agricultural processors, and food ingredient providers markets, and included information regarding reputation. These materials did not, however, explain the significance of status as introducing broker or how this role affected the firm's reputation. The Petitioner also did not file materials from professional, major trade publications, or mass media verifying the firm's reputation. Without additional corroboration, the Petitioner has not illustrated that his position with meets this criterion.

Similarly, although the Petitioner has presented evidence relating to his role in he has not shown that the company has a distinguished reputation. the owner of the firm,

confirmed that the Petitioner is its options program director and senior options instructor. He indicated that the Petitioner is "talented, disciplined, and with a profound and specialized knowledge and the desire to share and teach that knowledge." However, the record includes minimal information on stated that it is "one of [his] biggest education companies in the U.S. markets and worldwide," but did not provide information on the entity's reputation among others. a trader at the firm, provided that is "one of the largest education companies on the capital markets in the world," but he did not offer any objective corroboration of this statement. Without additional documentation, the Petitioner has not established that has a distinguished reputation.

The Petitioner has also not demonstrated that has a distinguished reputation. The Petitioner stated that is [a] local company in -Colombia, dedicated to Advanced Trainings in the Capital Markets." He presented materials from the company's website. He acknowledged, however, that the company "is not a big distinguished company or world-renowned." Without evidence of the entity's distinguished reputation, the Petitioner's involvement with the firm does not meet the plain language of the criterion.

Finally, while the Petitioner's curriculum vitae indicated that he worked for he did not explain how his employment as an independent investment advisor illustrated that he performed a leading or critical role for the entity. The Petitioner has not shown that his title, duties, or impact were indicative of a leading or critical role. For these reasons, the Petitioner does not meet 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.

On appeal, the Petitioner maintains that he "commands high remuneration for his consultant and training services in relation to others in the field." The Petitioner stated that his income was "in excess of 90k" between April 2013 and March 2014. He submitted bank documents as supporting evidence of his income. The Petitioner has not, however, shown he meets this criterion.

The submitted documentation is insufficient to verify the Petitioner's salary or remuneration. The Petitioner's bank statements listed deposits from his former and current employers. These bank records, while indicating the sources of the funds, did not explain the purposes of the funds, or show that they were his income. The Petitioner has not established that the bank transactions related to his salary or remuneration for services.

The Petitioner offered an printout, stating that it showed he received \$53,825.88 in "commissions" and \$38,973.13 in "fees" in 2013. The documentation provided reflected that in 2013, under the category of "Client Fees," revenue was \$53,825.88, expenses were \$51,762.60, and net was \$2,063.29. The Petitioner has not explained how a \$2,063.29 net in "Client Fees" constitutes a significantly high remuneration for services. Regardless, assuming *arguendo* that the Petitioner did earn "in excess of 90k" in 2013, he has not shown that this amount meets the

criterion. According to materials from the Bureau of Labor Statistics that the Petitioner presented, the average annual wage for a financial specialist in May 2014 was $71,230. The Petitioner offered printouts from other online sources indicating that the average salary of an options market consultant in August 2015 was $77,000 in Florida, and $82,000 in the United States. Although the Petitioner's claimed salary "in excess of 90k" is more than these averages, he has not provided information regarding the higher end of the salary spectrum. Evidence of earning marginally more than the average is not sufficient to meet the plain language of this criterion.

In addition, the Petitioner has not presented evidence regarding the salaries of options market educators. He claimed extraordinary ability as both an options market consultant and an options market educator. Without documentation of his earnings as an educator and the comparative income of others in the field, he has not shown that he commands a high salary or other significantly high remuneration for services. For all of these reasons, the Petitioner does not meet this criterion.

Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

On appeal, the Petitioner maintains that his commissions of $53,825.88 and fees of $38,973.13 constitute "evidence of commercial successes in his performances." The Petitioner has not shown that he meets this criterion. First, the plain language of the regulation indicates that the criterion is applicable to the performing arts. The Petitioner has not demonstrated that his work as an options market consultant and educator falls within the performing arts. Second, the Petitioner's 2013 net commissions were approximately $2,000 and his fees were $38,973.13. He has not established that these amounts are sufficient to show "commercial successes." Accordingly, the Petitioner does not meet this criterion.

B. Summary

The Petitioner has been working as an options market consultant and educator for a number of years. The reference letters stated in general terms that he is capable, knowledgeable, and important to his former and current employers. The record, however, does not establish that he meets at least three of the ten criteria listed under 8 C.F.R. § 204.5(h)(3)(i)-(x).

III. CONCLUSION

Had the Petitioner included the requisite material under at least three evidentiary categories, in accordance with the *Kazarian* opinion, our next step of analysis would be a final merits determination that considers all of the submissions in the context of whether the Beneficiary has achieved: 1) a "level of expertise indicating that [he] is one of that small percentage who have risen to the very top of the field of endeavor," and 2) "that the [Petitioner] has sustained national or international acclaim" and that his "achievements have been recognized in the field of expertise." *See* 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20. As the Petitioner has not

done so, the proper conclusion is that he has not satisfied the antecedent regulatory requirement of presenting initial evidence set forth at 8 C.F.R. § 204.5(h)(3)(i)-(x). *See Kazarian*, 596 F.3d at 1122.

Nevertheless, although we need not provide the type of final merits determination referenced in *Kazarian*, a review of the record in the aggregate does not support a finding that the Petitioner has achieved the level of expertise required for the classification. He has not demonstrated by a preponderance of the evidence that he is an individual of extraordinary ability in the field. A review of the submissions in the aggregate does not confirm that he has distinguished himself to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The Petitioner, therefore, has not established his eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. It is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of N-V-D-*, ID# 17570 (AAO Aug. 23, 2016)