U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF A-K-C-

DATE: JAN. 8, 2016

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a computer and system engineer, seeks classification as an individual "of extraordinary ability" in the sciences. *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 demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation. The Director determined that the Petitioner had not satisfied the initial evidentiary requirements set forth at 8 C.F.R § 204.5(h)(3), which requires a one-time achievement or satisfaction of at least three of the ten regulatory criteria.

On appeal, the Petitioner submits a statement, asserting that he meets the criteria listed under 8 C.F.R. § 204.5(h)(3)(ii), (v), (viii) and (ix). For the reasons discussed below, the Petitioner has not established his eligibility for the classification sought.

I. LAW

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

> (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 has 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 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 that petitioner 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 Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011) (affirming U.S. Citizenship and Immigration Services' (USCIS) 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 USCIS 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 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").

II. ANALYSIS

A. Evidentiary Criteria[1]

Under the regulation at 8 C.F.R. § 204.5(h)(3), the Petitioner, as initial evidence, may present a one-time achievement that is a major, internationally recognized award. In this case, the Petitioner has not asserted or shown that he is the recipient of a qualifying award at a level similar to that of the Nobel Prize. As such, he must provide at least three of the ten types of documentation listed under the regulations at 8 C.F.R. § 204.5(h)(3)(i)-(x) to meet the basic eligibility requirements.

[1] We have reviewed all of the evidence the Petitioner has filed and will address those criteria the Petitioner asserts he meets or for which he has submitted relevant and probative documentation.

> *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.*

On appeal, the Petitioner states that the associations of which he is a member "do have strict criteria about membership but not something like judged by experts yet," and that it is "highly unlikely" that there is "an association related to Information Technology where the membership is judged by some experts like some other fields." The Petitioner is a member of the

His membership in these associations does not meet the plain language requirements of the criterion. "is a member-driven organization, chartered with promoting the use of best practices for providing security assurance within Cloud Computing, and providing education on the uses of Cloud Computing to help secure all other forms of computing." Individuals are eligible to "receive a complimentary individual membership based on a minimum level of participation," if they have "an interest in cloud computing and expertise to help make it more secure." "is the community of choice for international cybersecurity security professionals dedicated to advancing individual growth, managing technology risk and protecting critical information and infrastructure." membership "is open to individuals who by education or experience give evidence of competence in an designated field," encompassing the field of computer science and information technology. offers a number of different membership grades, including two above the member grade. The Petitioner's membership confirmation does not specify a higher grade than "member." is "a professional society whose sole purpose is to promote the common business and technology interests of its members." The Petitioner has not submitted any documentation showing that these associations require their members to have "outstanding achievements" or that admission is "judged by recognized national or international experts."

On appeal, the Petitioner maintains that these associations are the "most reputed" and "world renowned" in the field. An association, however, may be distinguished for reasons other than their membership requirements.[2] At issue, according to the plain language of the regulation at 8 C.F.R § 204.5(h)(3)(ii), is whether the associations require outstanding achievements of their members.

The Petitioner asserts there are no qualifying associations in his field and requests that we disregard the plain language of the criterion and examine the submissions "from all the different perspectives." The Petitioner has not provided any legal authority under which we may ignore the plan language of the criterion when examining the relevant materials in the record. Instead, in our adjudication of appeals, we are bound by the applicable statute and regulations. Moreover, the Petitioner has not

[2] The Petitioner supports his assertions with material from the associations themselves. *See Braga v. Poulos*, No. CV 06-5105 SJO 10, 2007 WL 9229758, at *1, 6-7 (C.D. Cal. July 6, 2007), *aff'd*, 317 F. App'x 680 (9th Cir. 2009) (concluding that we did not have to rely on the promotional assertions on the cover of a magazine as to the magazine's status as major media).

corroborated that his field lacks associations that require "outstanding achievements of their members."[3] Going on record without support is not sufficient for the purposes of meeting the 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)). Even if the Petitioner had shown that certain criteria do not readily apply to his occupation such that he could rely on comparable evidence pursuant to 8 C.F.R § 204.5(h)(4), the Petitioner has not demonstrated that associations that do not require outstanding achievements of their members are comparable to those that do. Notably, membership in professional associations, without regard to the membership requirements of those associations, is a factor for exceptional ability, a lesser classification described at section 203(b)(2) of the Act. 8 C.F.R § 204.5(k)(3)(ii)(E). The Petitioner has not established that these types of memberships should also be a consideration for the higher classification he seeks.

In light of the above, the Petitioner has not met this criterion. Specifically, he has not demonstrated his 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. He has also not shown that he may rely on comparable evidence or that his memberships are comparable to those contemplated by the plain language requirements of 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 asserts that his patent application entitled meets this criterion. Specifically, he noted that the filing of the patent application shows his invention is original and his employer's use of his design proves its 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, they 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)). 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 must establish that his contributions are of major significance in the field, such that his work significantly advanced the field as a whole. Regardless of the field, the plain language of the phrase "contributions of major significance in the field" requires evidence of an impact beyond one's employer and 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).

[3] As discussed, the Petitioner documented that has higher levels of membership. We need not examine those membership requirements, however, as the Petitioner did not demonstrate that he has been admitted at these higher levels.

While the Petitioner asserts on appeal that the filing of a patent application alone demonstrates that the invention is original, it is the that makes that determination, not the applicant.[4] Regardless, at issue in this matter is whether the innovation is a contribution of major significance. A patent application, and even a granted patent, does not answer that question. Patents are available to those who invent or discover "any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof." 35 U.S.C. § 101.

Although the Petitioner's patent applications for and described original innovations, the filing of the applications does not confirm that the inventions are contributions of major significance in the field, such that they significantly advanced the field as a whole. Rather, the evidence, including reference letters, shows that the Petitioner's work has impacted his employer and its clients, but is not indicative of a wider influence. Petroleum Engineering Solution Manager, indicated that the Petitioner "developed [an] infrastructure solution" that "gave clients globally a great deal of confidence to convert" from their physical servers to a virtual platform. noted that the Petitioner "has invented a highly available and resilient license services solution while working at which has been "deployed at and "is currently being evaluated to be potentially rolled out commercially to the clients worldwide." said that the Petitioner has "demonstrated a great deal of motivation and delivered most innovative and cost effective infrastructure solutions" for his employer,

a software engineer, provided that the Petitioner "has developed systems configurations/processes on the task of managing product licenses which have led to a patent submission." stated that the Petitioner's work "has been of tremendous help to [the] user community, which has stabilized the licenses availability [*sic*] used by engineering and commercializing groups in the commercial release of products, a very robust solution." Information Technology (IT) Manager, said that the Petitioner's "most recent high value work was related to create an innovative and reliable license services for the based oil and gas applications which solves the major application downtime issues." These reference letters from colleagues show that the Petitioner's work has had an impact on his employer and its clients, but are insufficient to demonstrate an impact on the field of computer science and technology information as a whole. As noted, this criterion requires the Petitioner to establish impact beyond his employer and clients or customers. *See Visinscaia*, 4 F. Supp. 3d at 134-35.

The record also includes other reference letters that praised the Petitioner's ability and skills. Service Integration Leader, India, explained that he worked with the

[4] According to website, applications for patents are examined to determine if the applicants are entitled to patents under the law and patents are granted when applicants are so entitled.

Petitioner at [redacted] provided that the Petitioner "has tremendous technical knowledge in supporting large complex Unix based Servers" and "was the key technical person supporting and managing Unix infrastructure for the [redacted] – India's premier [redacted] network and [redacted] of India." [redacted] Senior Manager, Residency Practice-Southeast Asia, [redacted], also worked with the Petitioner at [redacted] He indicated that the Petitioner was "the most sought after Customer Engineer by many [redacted] clients, because of his expert knowledge, outstanding customer support skills, . . . and superior technical skills."

[redacted] experienced in IT and IT consulting, confirmed that he previously worked with the Petitioner. [redacted] wrote that the Petitioner has "extraordinary knowledge and expertise in Information Security & Information governance field" and he "brings an extensive IT design, network security experience which is very critical in today's modern ecommerce age where information/data security is of enormous value." While [redacted] affirmed that "there is an extreme shortage of individuals with subject matter expertise in the area of Information security, Information governance worldwide but specifically in the United States," the issue of whether there is a shortage of available workers with the Petitioner's skills falls under the jurisdiction of the Department of Labor. § 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i). [redacted] Senior Director, [redacted] described the Petitioner as having "multi-talented skills in different flavors of Unix (ranging from Mag[n]um Unix to HP Unix to SVR 4.2) and for really complex issues that nobody could solve, he was the go to person, 'the guru.'" These reference letters establish that the Petitioner is skilled at his work, but do not provide specific examples that support a finding that he has made contributions of major significance in the field as a whole.

Solicited letters from colleagues that do not specifically identify contributions or provide specific examples of how those contributions influenced the field are insufficient.[5] *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009), *aff'd in part*, 596 F.3d 1115 (9th Cir. 2010). The opinions of experts in the field are not without weight and have been considered above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, USCIS is ultimately responsible for making the final determination regarding a petitioner's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition does not create a presumption of eligibility; USCIS may, as this decision has done above, evaluate the content of those letters as to whether they support the foreign national's eligibility. *See id.* at 795; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Caron Int'l*, 19 I&N Dec. at 795; *see also Soffici*, 22 I&N Dec. at 165 (citing *Treasure Craft of California*, 14 I&N Dec. at 190); *Visinscaia*, 4 F. Supp. 3d at 134-35

[5] In 2010, the *Kazarian* court reiterated that our conclusion that "letters from physics professors attesting to [the Petitioner's] contributions in the field" were insufficient was "consistent with the relevant regulatory language." 596 F.3d at 1122.

(upholding our decision to give minimal weight to vague, solicited letters from colleagues or associates that do not include details on contributions of major significance in the field).

We have considered all the reference letters, including those not specifically mentioned. The reference letters do not establish that the Petitioner's accomplishments constituted contributions of major significance in the field. The record also lacks corroboration of the Petitioner's wider impact beyond his employers, such as, for example, media coverage of projects on which the Petitioner has worked. In light of the above, the Petitioner has not documented his original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field. He does not satisfy 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 concluded that the Petitioner, through his role as a Senior IT Systems Engineer at [redacted] "has played a critical role for [redacted] and that [redacted] enjoys a distinguished reputation." The evidence supports the Director's finding. Specifically, the record includes a number of reference letters from the Petitioner's supervisors and colleagues attesting to the critical nature of the Petitioner's work. [redacted] stated that the Petitioner's work "helps [redacted] avoid costly license serve downtime in terms of application unavailability and the very high value software." He also noted that the Petitioner is one of the "distinguished [redacted] at [redacted] and "play[s] key roles in assisting and supporting [the company's] clients achieve their primary goals of reducing exploration risk and optimizing hydrocarbon production and recover." Moreover, according to [redacted] the Petitioner's employer, [redacted] is "the major oilfield service company in the world" with a multitude of global clients. As such, the Petitioner has shown that he performs in a leading or critical role for his employer, [redacted] He satisfies this criterion.[6]

> *Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.*

The Director concluded that the Petitioner met this criterion. The evidence, including information the Director added to the record, sufficiently supports this finding. The Petitioner provided his Internal Revenue (IRS) Form W-2, Wage and Tax Statement, for 2013. The Director was satisfied that the income represented on that document was high in the field of computer science.

B. Summary

The Petitioner has been working as a computer and system engineer for a number of years. His employment has included working for a university and a multinational corporation. Based on the record, and for the reasons discussed above, however, we agree with the Director that the Petitioner

[6] Having found that the Petitioner's employment with [redacted] meets this criterion, we need not consider his involvement with other entities that he asserts also meets this criterion.

has not submitted the requisite initial evidence, in this case, documentation that satisfies at least three of the ten regulatory criteria. In addition, having considered all the filings, we conclude that the Petitioner has not shown his eligibility for the exclusive classification.[7]

III. CONCLUSION

The documentation submitted in support of a petition seeking extraordinary ability classification must show that the individual has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of his or her field of endeavor. Had the Petitioner included the requisite material under at least three evidentiary categories, in accordance with the *Kazarian* opinion, the next step would be a final merits determination that considers all of the submissions in the context of whether or not he has achieved: (1) a "level of expertise indicating that the individual 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 or her achievements have been recognized in the field of expertise." 8 C.F.R. § 204.5(h)(2) and (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) and (4). *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 supports a finding that the Petitioner has not achieved the level of expertise required for the classification sought.[8]

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. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the Petitioner has not met that burden.

ORDER: The appeal is dismissed.

Cite as *Matter of A-K-C-*, ID# 14974 (AAO Jan. 8, 2016)

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[7] Having found that the Petitioner has not met the antecedent regulatory requirements of presenting initial evidence set forth at 8 C.F.R § 204.5(h)(3) and (4), we need not consider his intent to continue to work as a computer and systems engineer in the United States, although we acknowledge that he is currently employed in his field and, on appeal, has expressed his intent to continue.

[8] We maintain *de novo* review of all questions of fact and law. *See Soltane v. United States Dep't of Justice*, 381 F.3d 143, 145 (3d Cir. 2004). In any future proceeding, we maintain the jurisdiction to conduct a final merits determination as the office that made the last decision in this matter. 8 C.F.R. § 103.5(a)(1)(ii); *see also* INA §§ 103(a)(1), 204(b); DHS Delegation Number 0150.1 (effective March 1, 2003); 8 C.F.R. § 2.1 (2003); 8 C.F.R. § 103.1(f)(3)(iii) (2003); *Matter of Aurelio*, 19 I&N Dec. 458, 460 (BIA 1987) (holding that legacy INS, now USCIS, is the sole authority with the jurisdiction to decide visa petitions).