U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF C-M-C-

DATE: NOV. 22, 2016

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a software engineering director, seeks classification as an individual "of extraordinary ability" in the sciences. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This classification 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, Texas Service Center, denied the petition, concluding that the Petitioner had not provided documentation satisfying the initial evidence requirements set forth at 8 C.F.R § 204.5(h)(3), which requires documentation of a one-time achievement or evidence that meets at least three of the ten regulatory criteria.

We initially summarily dismissed the Petitioner's appeal but subsequently reopened the matter. The Petitioner submits additional documentation and a brief stating that he meets more than three criteria.

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

I. LAW

The Petitioner may demonstrate his extraordinary ability through sustained national or international acclaim and achievements that have been recognized in her 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 –
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> (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 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

The Petitioner currently works as director of engineering for [redacted] an online education company. The Petitioner filed Form I-140, Immigrant Petition for Alien Worker, along with supporting documentation seeking to classify himself as an individual of "extraordinary ability in the field of software engineering, particularly scalable web architectures." The Director found that the Petitioner met the judging criterion under 8 C.F.R. § 204.5(h)(3)(iv) and the leading or critical role criterion under 8 C.F.R. § 204.5(h)(3)(viii), but had not satisfied any of the other criteria at 8 C.F.R. § 204.5(h)(3). On appeal, the Petitioner maintains that he meets the awards criterion under 8 C.F.R. § 204.5(h)(3)(i), the published material criterion under 8 C.F.R. § 204.5(h)(3)(iii), the original contributions criterion under 8 C.F.R. § 204.5(h)(3)(v), the authorship of scholarly articles criterion under 8 C.F.R. § 204.5(h)(3)(vi), and the high salary criterion under 8 C.F.R. § 204.5(h)(3)(ix). We have reviewed the entire record of proceedings, and it does not support a finding that the Petitioner meets the plain language requirements of at least three criteria.

A. Evidentiary Criteria

As the Petitioner has not 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).

> *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 Petitioner submitted a letter from of India, discussing the Petitioner's prior employment "in a senior engineering capacity at as a member of its "Workflows team." claimed that the Petitioner "was presented with which was given to only three of the company's thousands of employees worldwide, and which came with a significant cash award." The Petitioner, however, did not provide a copy of his or any payroll documentation reflecting his receipt of the cash award. statement, unsubstantiated by supporting evidence, is insufficient to satisfy the Petitioner's burden of proof. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). Nonetheless, even if the Petitioner documented his performance award from the record does not demonstrate that this award is recognized on a national or international level.

The Petitioner also provided evidence of his rankings from various science, mathematics, and physics examinations that he took in India. His documentation included a letter from the indicating that his 1996 entrance examination score for those seeking admission to the ranked him among the applicants in India. In addition, he submitted a ' certificate stating that he "took part in the [ ] examination held in January 1995 in category and ranked out of 2,101 students in that category. Furthermore, the Petitioner offered a recruiting letter from and a printout of the examination results for September 1995 reflecting that he ranked on the list of those seeking admission to the He also provided a certificate from the indicating that he "placed among the Top in Part A" of the (1995) "out of candidates" enrolled at Additionally, the Petitioner submitted a ' in recognition of his "very good performance in the in 1993.

On appeal, the Petitioner argues that the Director did not properly consider "a statement from a top official in the Indian government confirming that [the Petitioner] received five awards that are considered national in nature." The record included a letter from private secretary to discussing the above Indian examinations. In his letter, explained the process for each of the five examinations and stated that the Petitioner's aforementioned rankings

constitute "awards" which are "recognized as being national in scope." USCIS, however, need not rely on unsubstantiated statements. *See 1756, Inc. v. U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990) (holding that an agency need not credit conclusory assertions in immigration benefits adjudications).

The plain language of this criterion requires the Petitioner's receipt of "nationally or internationally recognized prizes or awards for excellence in the field endeavor." In this case, the Petitioner's "field of endeavor" is software engineering, and none of the examination results he offered were for excellence in that particular field. Furthermore, with respect to the certificate from the it reflected his placement in the top out of students enrolled at Accordingly, the certificate reflects institutional or local recognition at the Petitioner's school rather than a nationally recognized award for excellence in the field. Similarly, the Petitioner's for his "very good performance in the constitutes regional recognition in a student mathematics competition, and not a nationally or internationally recognized award in his field. Regarding the Petitioner's ranking of among the applicants in India, his ' ranking of out of 2,101 students in category and his ranking of on the list of those seeking admission to the the Petitioner has not shown that such examination results equate to "nationally or internationally recognized prizes or awards for excellence" in the field of software engineering. For the aforementioned reasons, the Petitioner has not established that he meets this regulatory criterion.

> *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 Director found that the Petitioner did not meet this criterion because the submitted articles were not about him. The Petitioner provided various online articles about and and their service offerings and systems' features, but none of the articles mentioned the Petitioner. The plain language of the regulatory criterion requires "published material about the alien." Articles that are not about the Petitioner do not meet this regulatory criterion. *See, e.g., Negro-Plumpe v. Okin,* 2:07-CV-00820 at *1, *7 (D. Nev. Sept. 2008) (upholding a finding that articles about a show are not about the actor). On appeal, the Petitioner lists this criterion among the seven criteria he previously claimed to satisfy, but he does not address the Director's findings for this criterion or offer any further arguments or documentary evidence. Accordingly, the Petitioner has not established that he meets this regulatory 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.* 8 C.F.R. § 204.5(h)(3)(iv).

The Petitioner submitted evidence reflecting that he reviewed nominations and selected winners for the As such, the Director found that the Petitioner met this criterion, and we concur with that determination.

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).

As evidence under this criterion, the Petitioner provided several reference letters. The Director considered the letters and concluded that although they discussed the background and achievements of the Petitioner, they were insufficient to establish that his work constitutes original contributions of major significance in the field. The Director noted that the Petitioner had not shown that his work has made a significant impact beyond the company he works for and the clients it serves.

On appeal, the Petitioner does not point to any specific software engineering contributions that meet the requirements of this regulatory criterion. Instead, the Petitioner argues that "the evidence presented clearly demonstrates that by having a significant impact on [his] employer, his work by extension has had an impact on his field, and is therefore of major significance." The Petitioner further contends that there is no regulatory requirement stating "that a particular field must be changed as result of an individual's original contributions in order for those contributions to be of major significance."

The Petitioner offered letters of support discussing his work on software engineering projects for his employers and their clients.[1] For example, chief executive officer (CEO) at stated: "[The Petitioner's] impact on was instantaneous. He can build infrastructure and back-end technologies, but he is also proficient in front-end development . . . . He made our video content social-media-enabled and created our integration - within the span of a single week." did not explain how the Petitioner's work has affected the field beyond and it clients or has otherwise risen to the level of scientific or business-related contributions of major significance in the software engineering field. The plain language of the regulation requires that the Petitioner's contributions be "of major significance in the field" rather than just to his employer and its customers.

CEO of indicated that the Petitioner created "a distributed folder feature that allows users to work on different versions of a document in a common folder." In addition, noted that that Petitioner developed "a web conferencing tool that allows users to host and attend online meetings where they can share desktops, as well as text-chat and video-chat with up to 10 concurrent users," but he did not provide examples of how the distributed folder feature and web conferencing tool have influenced the field of software engineering or how they otherwise equate to original contributions of major significance in the field.

[1] We discuss only a sampling of these letters, but have reviewed and considered each one.

a director at mentioned that the Petitioner worked on a project to ensure that different versions of the company's database product could communicate with each other. stated that the Petitioner's contributions to the project included "using object-oriented to run regression suites," "testing the transportation of troublespaces in our 10i database across different platforms," and "developing an framework] in Java for testing interoperability between different versions of our databases on different platforms." While discussed the Petitioner's database communication project for the record does not include documentary evidence indicating his work has substantially impacted the field or otherwise constitutes original contributions of major significance in the field of software engineering.

an editorial manager at noted that the Petitioner and his team revamped proprietary and that the company's enhanced allows it to "create, update, and release content on a massive scale – hundreds of lessons every month." did not offer examples of how the system has affected the software engineering field in a substantial way or has otherwise risen to the level of an original contribution of major significance in the field.

Vice President of Career Development and a Broker Associate at indicated that his company is a client of and relies on its training products. noted that the Petitioner "created an automated framework to submit content daily in an organized manner in the forms of Text, XML, and Video Sitemaps, thus making it easy for search engines to classify, rank, and present these pages to Internet users." The record, however, does not include supporting evidence showing that the Petitioner's automated framework equates to a contribution of major significance in the software engineering field.

director of learning and development at an operator of upscale fitness clubs, stated that his company's training platform is powered by the that the Petitioner developed at further mentioned that "[t]he has helped create around 50 training materials" for its employees, but did not explain how the has widely impacted the field of software engineering, so as to demonstrate original contributions of major significance in the field.

chief technology officer of noted that his company's suite of training services for entrepreneurs "would not be possible with a training platform that was built by added that the Petitioner created a single sign on (SSO) feature for customers that allowed them "to seamlessly login to and be led to the right training that is assigned to them." While the training platform and SSO feature devised by the Petitioner are useful to there is no indication that they have affected his field at a level indicative of original scientific contributions of major significance in software engineering.

The Petitioner submitted letters of varying probative value. We have addressed the specific affirmations above. Generalized conclusory statements that do not identify specific contributions or

their impact in the field have little probative value. *See 1756, Inc.*, 745 F. Supp. at 15. In addition, uncorroborated statements are insufficient. *See Visinscaia*, 4 F.Supp.3d at 134-35; *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988) (holding that an agency "may, in its discretion, use as advisory opinions statements . . . submitted in evidence as expert testimony," but is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought and "is not required to accept or may give less weight" to evidence that is "in any way questionable"). The submission of reference letters supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the petitioner's eligibility. *Id. 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"). Without additional, specific evidence showing that his work has been unusually influential, has substantially impacted the software engineering field, or has otherwise risen to the level of original contributions of major significance in the field, the Petitioner has not established that he meets this regulatory criterion.

> *Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.* 8 C.F.R. § 204.5(h)(3)(vi).

The Petitioner submitted a blog post available at [redacted] entitled [redacted] which promoted [redacted] and its online content. The Director found that the Petitioner did not meet this criterion because the blog post was not scholarly. Furthermore, the evidence did not show that the blog post appeared in professional or major trade publications or other major media. On appeal, although the Petitioner lists this criterion among the seven criteria he previously claimed to satisfy, he does not challenge the Director's findings for this criterion or provide any additional arguments or evidence. Therefore, the Petitioner has not established that he meets this regulatory 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).

The Director determined that the Petitioner's documentation reflected that he, as director of engineering, performed in a leading or critical role for [redacted] an organization that has a distinguished reputation. The record supports the Director's finding that the Petitioner meets this regulatory 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).

With respect to his compensation, the Petitioner provided a May 2015 letter from [redacted] stating that he "is paid $120,000/year" and has been granted [redacted] "stock options that are currently valued at over $150,000." On appeal, the Petitioner submits a December 2015 letter from [redacted] a partner with [redacted] a global venture capital firm, contending that the Petitioner "has been compensated at an exceptionally high rate for someone at his level when compared to the standards in the field of software engineering." [redacted] further indicates:

> As is often the case with early employees of startup companies in the high-tech field, [the Petitioner] has been granted a considerable amount of stock options. To be specific, he was the recipient of 150,000 shares in 2011. As of mid-2014, 131,250 of those shares had vested, and their fair market value was $131,651.88.

In addition, notes that the Petitioner was "granted an additional 10,000 shares in late 2014." We note that the Petitioner received the additional 10,000 shares after he filed the Form I-140 on June 1, 2014. Eligibility, however, must be established at the time of filing. 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). Accordingly, we cannot consider any remuneration received after the date the petition was filed as evidence to establish the Petitioner's eligibility at the time of filing.

Regarding the aforementioned references' attestations concerning Petitioner's compensation from he did not provide any supporting evidence in the form of payroll records, employee benefits statements, or income tax forms. *See Matter of Soffici*, 22 I&N Dec. at 165. The Director's decision noted that although USCIS issued a request for evidence (RFE) instructing the Petitioner to submit his W-2 Forms, he did not submit the requested documents.

Nevertheless, even if the Petitioner provided sufficient evidence of his compensation from the record does not show that he has received a high salary or other significantly high remuneration for services, in relation to others in the field. As evidence of his high salary relative to others in the field, the Petitioner's response to the RFE included pay information from the U.S. Bureau of Labor Statistics (BLS) indicating that "[t]he median annual wage for applications software developers was $90,060 in May 2012"[2] and that "the top 10 percent earned more than $138,880." Because the Petitioner's yearly salary of $120,000 falls substantially below that of the top ten percent of software engineers, the wage information from the BLS does not show that he has earned a high salary relative to others in the field.

In support of the appeal, the Petitioner provides a December 2015 letter from president of stating that he reviewed the " data for software engineers and that he believes the Petitioner "ranks in the top 10% nationally." Based on his review of "the 75th percentile of 'Total Direct Compensation (TDC) Actual' data found on pages 64 and 70 of the survey," concluded that the Petitioner's pay as a software engineer is "above the maximum of the U.S. range (page 64) and at the 87th percentile of the West Coast sample (page 70)." While the appellate submission contains a copy of the it does not include pages 64 and 70 to support claims. *See Matter of Soffici*, 22 I&N Dec. at 165. Regardless, the 75th percentile of software engineers' compensation is not an appropriate basis for comparison as the Petitioner is a director of engineering and serves in a managerial capacity.

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[2] According to the BLS, "[t]he median wage is the wage at which half the workers in an occupation earned more than that amount and half earned less."

The Director's decision noted that "the Petitioner is not just a software developer, but rather he is the Director of Engineering for which is a higher level than a regular software developer." On appeal, the Petitioner contends that the Director's "statement is nonsensical" and that requiring "an individual's compensation be compared to other elite members of that field rather than to average members of the field is to render [this] regulatory criterion meaningless." The Director, however, did not state that the Petitioner's compensation should be compared to other "elite members" of his field. Rather, the Director indicated that the Petitioner's managerial position for reflects a "higher level" of duties and responsibilities than those of a software engineer. The Petitioner must present evidence showing that has earned a high salary or significantly high remuneration in comparison with those performing similar services in the field. *See Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994) (considering a professional golfer's earnings versus other PGA Tour golfers); *see also Skokos v. U.S. Dept. of Homeland Sec.*, 420 F. App'x 712, 713-14 (9th Cir. 2011) (finding average salary information for those performing lesser duties is not a comparison to others in the field); *Grimson v. INS*, 934 F. Supp. 965, 968 (N.D. Ill. 1996) (considering NHL enforcer's salary versus other NHL enforcers); *Muni v. INS*, 891 F. Supp. 440, 444-45 (N. D. Ill. 1995) (comparing salary of NHL defensive player to salary of other NHL defensemen). Accordingly, the compensation data offered for software engineers does not constitute an appropriate basis for comparison.

Lastly, the Petitioner did not provide evidence showing that his stock options reflected significantly high remuneration compared to others in his field. In his letter, specifically noted that receiving a considerable amount of stock options "is often the case with early employees of startup companies in the high-tech field."

In this case, the Petitioner has not established that he has received a high salary or other significantly high remuneration for services in relation to others in the field. Therefore, the Petitioner has not established that he meets this regulatory criterion.

B. Summary

As explained above, the evidence provided satisfies only two of the regulatory criteria. As a result, 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 listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

Had the Petitioner included the requisite material under at least three evidentiary categories, our next step of analysis would be a final merits determination that considers all of the submissions in the context of whether he 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." 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 this classification.

C. O-1 Nonimmigrant Status

We note the record of proceedings reflects that the Petitioner received O-1 status, a classification reserved for nonimmigrants of extraordinary ability. Although USCIS has approved at least one O-1 nonimmigrant visa petition filed on behalf of the Petitioner, the prior approval does not preclude USCIS from denying an immigrant visa petition which is adjudicated based on different standard – statute, regulations, and case law. Many Form I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Brothers Co. Ltd.,* 724 F. Supp. at 1103. Furthermore, our authority over a USCIS service center, the office responsible for adjudicating the nonimmigrant visa petition, is comparable to the relationship between a court of appeals and a district court. Even if a service center director has approved a nonimmigrant petition on behalf of an individual, we are not bound to follow that finding in the adjudication of another immigration petition. *Louisiana Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

III. CONCLUSION

The Petitioner has not demonstrated by a preponderance of the evidence that he is an individual of extraordinary ability under section 203(b)(1)(A) of the Act. Accordingly, he has not established 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).

ORDER: The appeal is dismissed.

Cite as *Matter of C-M-C-*, ID# 12620 (AAO Nov. 22, 2016)