U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF M-T-

DATE: AUG. 17, 2017

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a lawyer and engineer, 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 of the Texas Service Center denied the petition. He determined that the Petitioner had satisfied the initial requirements set forth at 8 C.F.R § 204.5(h)(3) by providing evidence that meets at least three of the 10 regulatory criteria. However, the Director conducted a final merits analysis and found that the Petitioner had not established that he has sustained national or international acclaim, that he is among the small percentage at the very top of the field of endeavor, and that his achievements have been recognized in the field through extensive documentation.

On appeal, the Petitioner asserts that the Director erred in his final merits analysis of the evidence and issued the decision without considering the totality of the evidence.

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

I. LAW

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 two options for satisfying this classification's initial evidence requirements. First, a petitioner can demonstrate a one-time achievement (that is a major, internationally recognized award). Alternately, he or she must provide evidence that meets at least three of the criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (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). This two-step analysis is consistent with our holding that the "truth is to be determined not by the quantity of evidence alone but by its quality," as well as the principle 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." *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

II. ANALYSIS

As an initial issue, the Petitioner claims on appeal that he was not given a reasonable period to respond to the Director's request for evidence (RFE). The Director issued the RFE on September 7, 2016, and stated that the Petitioner's response must be received by December 3, 2016. On September 29, 2016, the Petitioner submitted a response and a request for expedited processing. The Director denied the petition on October 13, 2016. The Petitioner asserts that he should have been given until December 3, 2016, to send additional evidence. We note that, in response to an RFE or a notice of intent to deny, individuals must provide all of the requested materials together at one time. If only some of the requested evidence is submitted, U.S. Citizenship and Immigration Services will treat such submission as a request for a decision on the record. 8 C.F.R. § 103.2(b)(11). Thus, the Petitioner's timely response to the RFE was considered a request for a decision on the record and the Director did not err by issuing the decision prior to December 3, 2016. Regardless, the Petitioner has offered additional evidence on appeal, and we will consider the record as a whole.

A. Evidentiary Criteria

The Petitioner has indicated he is an engineer and lawyer focusing on research and development, inventions, intellectual property rights, and engineering solutions. He stated that he has built a

national and international reputation as an acknowledged expert in intellectual property law, e-business, and engineering, and wishes to continue his work as an "intellectual property specialist lawyer" in the United States. The Director found that the Petitioner met the initial evidence requirements for three criteria: published material, leading role, and scholarly articles.[1] However, he concluded in a final merits determination that the submissions were not commensurate with sustained national or international acclaim.

On appeal, the Petitioner maintains that the Director did not properly consider all of the evidence and that the decision does not conform to the *Kazarian* two-part analysis. He further contends that the Director "improperly imposed" a burden on him by requiring him to maintain his acclaim through the time of filing despite the fact that he has established national or international acclaim over a 20 year period. He also claims eligibility under the original contributions criteria.[2] For the reasons discussed below, we conclude that the record is not indicative of the necessary level of acclaim and status in the field.

The record supports the Director's findings that the Petitioner met the published material and scholarly articles criteria based upon an article published about the Petitioner in his authorship of a scholarly article published in and two chapters in the book The Director also found that the Petitioner demonstrated he has performed in a leading or critical role as a member of the Board of Directors of the Once a Petitioner satisfies at least three of the regulatory criteria, the focus shifts to whether the evidence establishes that the Petitioner has the necessary status and acclaim in the field. As the record supports a finding that the Petitioner meets three criteria, any evidence relating to the other criteria is better considered in the context of the final merits analysis.

B. Final Merits Analysis

In the final merits determination, we consider the totality of the record to determine if a petitioner has demonstrated, by a preponderance of the evidence, that he has sustained national or international acclaim and is one of the "small percentage who have risen to the very top of the field of endeavor," and that his achievements have been recognized in the field through extensive documentation. We consider the entire record, including submissions that do not meet any of the enumerated criteria. In this matter, we determine that the Petitioner has not shown his eligibility.

While the record includes evidence of several awards, the Petitioner has not demonstrated they are nationally or internationally recognized for excellence in his field, or that they establish a high level of acclaim for his work. He did not show, for instance, national or international level press coverage of the awards. The Petitioner emphasizes his receipt of the which recognized the best article published in in 1999. The Petitioner's work,

[1] 8 C.F.R. § 204.5(h)(3)(iii), (viii), and (vi).
[2] 8 C.F.R. § 204.5(h)(3)(v).
[3] 8 C.F.R. § 204.5(h)(3)(viii).

was published in the 1999 edition of and highlighted in a subsequent edition of that publication in 2001. The Petitioner has not demonstrated that his receipt of the award is reflective of national or international acclaim as an engineer. Furthermore, the Petitioner has not demonstrated that he has sustained any notoriety or attention resulting from this honor since 2001.

Regarding the published material criterion under 8 C.F.R. § 204.5(h)(3)(iii), the record includes an article published in entitled " recounting an interview in which the Petitioner explained the legal dangers of e-business for modern companies.[4] The article offers an explanation of e-business legal issues and the Petitioner's opinion of measures that companies should institute to minimize their e-business risk, therefore, it satisfies the regulatory criterion.[5] However, we do not find that this single article published in 2000 demonstrates sustained national or international acclaim or that it reflects a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990). Although the Petitioner provided self-reported distribution figures for the publication, he has not proven that such coverage meaningfully demonstrates his status among the small percentage at the top of his field.

As evidence under the judging criterion at 8 C.F.R. § 204.5(h)(3)(iv), the Petitioner notes that he was appointed in 2002 to serve as one of three members of an interview panel to select a chief executive officer for Assistant Director of the from 1997 to 2002, provided a statement attesting that the Petitioner was one of the three person interview panel tasked with hiring the new CEO. However, he did not describe the duties of committee members or provide further explanation of the interview or hiring process. The Petitioner has not described the nature of his role interviewing candidates, nor does the evidence show who was invited to participate, or how he was selected for the interview committee. Without further information detailing this role, its responsibilities, and the process by which the Petitioner was selected, he has not demonstrated how his work on this committee is indicative of his standing in the field. Accordingly, the evidence under this criterion does not support a finding that he "is one of that small percentage who [has] risen to the very top of the field of endeavor." *See* 8 C.F.R. § 204.5(h)(2). Furthermore, as his participation on the panel occurred in 2003, the evidence is not indicative that he has *sustained* national or international acclaim in his field.

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[4] A copy of the article included in the record includes a handwritten note, signed by that the article was published in in 2000.

[5] The record includes two additional articles: ' published in on 2000, and " ' published in on 2000. Neither article mentions the Petitioner; instead each focuses on the mission to the United States and its subsequent report called While the record does include evidence that the Petitioner contributed two chapters to this report, the plain language of the regulation requires that the items be "about" the Petitioner, relating to his work. 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).

Though not addressed by the Director, the Petitioner has demonstrated that he meets the membership criterion based upon his selection as a fellow with the [redacted] The record includes evidence that the [redacted] is a professional engineering organization with over 160,000 members in 150 countries, and that the designation of fellowship with the [redacted] is awarded to individuals "who have sustained high levels of achievement" through an application process judged by national and international experts in the engineering field. However, the Petitioner has not proven that either membership reflects sustained national or international acclaim or that he "is one of that small percentage who [has] risen to the very top of the field of endeavor." *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2). The Petitioner has not shown how many members of IET are selected as fellows, the criteria for selection, or otherwise explained how this appointment renders him one of the small percentage at the top of his field. Similarly, while the Petitioner submitted evidence of his selection as a charter engineer with [redacted] the record does not include evidence that being chosen as a charter engineer is commensurate with achievement at the top of the engineering field. Additionally, the Petitioner was named a fellow of [redacted] in 2007; yet, the record does not include any evidence that he has worked with the organization since then, nor that he has sustained acclaim deriving from that honor.

Regarding the leading or critical role criterion, the Director determined that the Petitioner established that his role for the [redacted] was leading or critical. Additionally, the Director found that the record established that the [redacted] had a distinguished reputation.[7] The Director pointed to the letter from [redacted] stating that the Petitioner was [redacted] of the Council in 1999, along with emails from the [redacted] and minutes of its meetings. [redacted] further describes how the Petitioner participated as a member of a technology mission to the United States and subsequently authored two chapters in a publication summarizing the mission. In general, a leading role is evidenced from the role itself, and a critical role is one in which a petitioner was responsible for the success or standing of the organization or establishment. While the evidence refers to his position on the Board of Directors of the [redacted] the dates of his tenure are not clear and the record does not include evidence that election or service on either the board or the senate is commensurate with one of that small percentage who has risen to the very top of the field.[8] The record does not resolve how his position with the [redacted] garnered him notoriety or places him in the small percentage at the top of the field. Additionally, the Petitioner stepped down from this role in 2003 and has not demonstrated any involvement with the [redacted] since that time to indicate that his role with the organization is otherwise reflective of sustained acclaim.

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[6] 8 C.F.R. § 204.5(h)(3)(ii).

[7] [redacted] letter explains that the [redacted] is the regulatory body for the United Kingdom engineering profession, that it "sets internationally recognized standards of professional competence and commitment," and, that it includes more than 200,000 professional engineers in several companies.

[8] An email to him from the governance and committee executive of the [redacted] confirms that he resigned from the [redacted] in October 2003 and it indicates that the Petitioner's name does not appear in the [redacted] minutes.

Lastly, the Petitioner authored two articles in the professional publication along with two chapters in the study While we note that one article won the for the best article published in in 1999, he has not demonstrated that these writings are indicative of, or resulted in, sustained national or international acclaim or recognition. He has not submitted any critical reviews of the book indicating acclaim, or offered evidence of the publication's circulation or readership such that we can determine that it suggests the Petitioner has achieved sustained national or international acclaim.

On appeal, in response to the Director's finding that the Petitioner has not established sustained acclaim in his field, the Petitioner asserts that his reputation has "increased but it has increased in secret among the people at the very top levels of the He further attests that he has made original contributions of major significance pursuant 8 C.F.R. § 204.5(h)(3)(v), by refining and improving upon several "conventional and nuclear directed energy weapons and to electronic warfare methods and technologies." He describes how he is currently working on projects that have resulted in pending patent applications, a theory of matter that he aims to publish, and several engineering projects that are in process. The record includes copies of the pending patent applications, a letter from a businessman in the UK discussing the Petitioner's idea known as , and a description of his theory of matter. He has not presented evidence, however, that these recent projects have been published, cited, utilized in the field, or have otherwise garnered national or international acclaim. While the Petitioner maintains that his current projects will "eventually hit the public domain," he must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1). Thus, we cannot consider accomplishments and accolades that have yet to come to fruition.

In the aggregate, the Petitioner has demonstrated his membership in several engineering professional organizations; his service on a hiring committee, the significance of which is not corroborated in the record; authorship of an article and books with undocumented influence in the field; and his receipt of a writing award. Most of the evidence in the record is from 1999-2004 with little evidence of the Petitioner's accomplishments and work after that period that would indicate *sustained* acclaim. Overall, while the exhibits demonstrate some success in his field, they do not place him in the small percentage at the top of the field or show the sustained national or international acclaim required for this highly restrictive classification.

III. CONCLUSION

For the reasons discussed above, 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.

ORDER: The appeal is dismissed.

Cite as *Matter of M-T-*, ID# 466531 (AAO Aug. 17, 2017)