U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF R-K-B-

DATE: NOV. 21, 2017

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a software developer, 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 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 Nebraska Service Center denied the Form I-140, Immigrant Petition for Alien Worker, concluding that the Petitioner had satisfied only two of the ten initial evidentiary criteria, of which he must meet at least three.

On appeal, the Petitioner submits additional evidence and contends that he meets four criteria.

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

I. LAW

Section 203(b)(1)(A) of the Act makes visas available to immigrants with extraordinary ability if:

(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The 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). Alternatively, he or she must provide documentation that meets at least three of the ten categories of evidence listed at 8 C.F.R. § 204.5(h)(3)(i)-(x) (including items such as awards, memberships, and published material in certain media).

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. 8 C.F.R. § 204.5(h)(2)-(3).

II. ANALYSIS

The Petitioner is a software developer employed by [redacted] as principal research engineer. As he 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).

A. Evidentiary Criteria

In denying the petition, the Director found that the Petitioner met the judging criterion at 8 C.F.R. § 204.5(h)(3)(iv) and the authorship of scholarly articles criterion at 8 C.F.R. § 204.5(h)(3)(vi). The Director held that he had not met the contributions of major significance criterion at 8 C.F.R. § 204.5(h)(3)(v) or the leading or critical role criterion at 8 C.F.R. § 204.5(h)(3)(viii). We conclude that the evidence in the record indicates that he has reviewed manuscripts for several journals, authored articles that have appeared in professional publications, and performed a critical role for [redacted], an organization that has a distinguished reputation. Accordingly, the Petitioner has satisfied three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3). We will evaluate the totality of his documentary evidence in the context of the final merits determination below.

B. Final Merits Determination

As the Petitioner has submitted the requisite initial evidence, we will evaluate whether the Petitioner has demonstrated, by a preponderance of the evidence, that he has sustained national or international acclaim and is one of 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. In a final merits determination, we analyze a petitioner's accomplishments and weigh the totality of the evidence to determine if his successes are sufficient to demonstrate that he has extraordinary ability in the field of endeavor. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2)-(3); *see also Kazarian*, 596 F.3d at 1119-20. In this matter, we determine that the Petitioner has not shown his eligibility.

The record indicates that the Petitioner received his Ph.D. degree in mechanical engineering from the in 2008 and is employed as principal research engineer for He focuses on improving software which is used to predict how products will react to physical or environmental forces. As mentioned above, the Petitioner has reviewed manuscripts, authored scholarly articles, and performed a critical role for an organization that has a distinguished reputation. However, the Petitioner has not demonstrated that his achievements are reflective of a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990).

Regarding the Petitioner's participation as a judge of others' work, an evaluation of the significance of his judging experience is sanctioned under *Kazarian*, 596 F. 3d at 1121-11, to determine if such evidence is indicative of the extraordinary ability required for this highly restrictive classification. Participation in the peer review process does not automatically demonstrate that an individual has sustained national or international acclaim at the very top of his field. Here, the record indicates that the Petitioner has received and completed independent requests to review six papers for publication in the and the and six technical publications for technical conferences. The record indicates that these reviews took place in 2014 and 2016. The Petitioner has not submitted evidence demonstrating that he has a consistent history of completing a substantial number of review requests relative to others in his field. In addition, the Petitioner states that he served as a judge of the work of others as the committee at the in 2014, but he has not established that his peer review experience places him among that small percentage at the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2). The Petitioner has not shown that this level of judging experience reflects the required sustained national or international acclaim. *See* section 203(b)(1)(A) of the Act.

With regard to the Petitioner's authorship of scholarly articles, he presented evidence showing that he authored 12 articles from 2003 to 2014. The Petitioner also submitted an report to demonstrate how his citation count compares to others in the field. While the Petitioner appears to have commendable publication levels within the computer science field for 2008 and 2009, the Petitioner's publication record and citation evidence in the years that follow do not establish sustained national or international acclaim. Section 203(b)(1)(A) of the Act; 8 C.F.R. § 204.5(h)(3).

The Petitioner states that in a request for evidence the Director compared his citation level to that of a leading researcher at whose work has received 1,981 citations. In the

Director's decision, he stated that the number of citations to the Petitioner's work do not substantiate contributions of major significance in the field when compared with leading scientists in the field, whose publications according to Google Scholar are in the thousands. The Petitioner states that a comparison of his citations to those of is unreasonable due to the differences in their fields of research. The record includes a letter from in which he explains the differences between his position and that of the Petitioner and offers this as a reason why the two should not be compared. states that the Petitioner's field of simulation software development "is geared towards creating new software capabilities for improved use by others and does not lend itself to frequent publication or a level of citation in the 1,000s."

asserts that his level of citations should not be compared to that of the Petitioner because field is "visualization and user interface" which is a broader field that attracts more interest, including from the academic community, and lends itself more to publishing. He also states that his work in academia as a guest professor contributes to publishing more than working solely in the industry. While we acknowledge that the Petitioner's citations should not be compared against those of with an expectation that he have citations in the thousands, we find that the citations to the Petitioner's work do not demonstrate that he has sustained national or international acclaim under 8 C.F.R. § 204.5(h)(3). In addition, the Petitioner offers evidence on appeal demonstrating that his number of citations is higher than 14 other researchers at but he has not shown that this internal comparison places him in the small percentage of those who have risen to the very top of the field under 8 C.F.R. § 204.5(h)(2).

While the Petitioner established that he has a critical role in an organization with a distinguished reputation, the record does not demonstrate how this has led to sustained national or international acclaim or placed him at the very top of his field. The record contains a letter from who describes the beginnings of with the specialization of Computer Aided Design (CAD) development. He explains that currently "CAD innovation and demand is plateauing and can no longer be exploited as a growth strategy for further states that "the current trajectory for the company's growth is centered on the continued development and enhancement of and that the Petitioner "is relied upon by in the development of our Company's primary growth strategy." This demonstrates a critical role within organization, but the record does not establish that the Petitioner's role in is commensurate with sustained national or international acclaim and that he is one of that small percentage who have risen to the very top of the field. Section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2)-(3).

With respect to the Petitioner's original scientific contributions in the field, he submitted letters from representatives from two of customers, researchers in the field, and professionals and managers. For example, the Petitioner provides a letter from the Founder and Chief Technology Officer of stating that the Petitioner "developed a technique for accurate and efficient computation of view factors for simulating cavity radiation problems." He further indicates, "Problems that would take several hours to complete simulation now take less than an hour with [the Petitioner's] technique, thereby improving the productivity of engineers." adds that "prior to [the Petitioner's] research, the

package lacked the support of pyramid shape finite elements" which are "particularly important for simulating the structural behavior of rubber-like materials due to their incompressible nature and behavior which is difficult to accurately predict."

In his letter, the Engineering Manager for indicates that the Petitioner developed techniques to improve performance in that "resulted in a 300% increase in the speed of finite element calculations." states that the Petitioner "also developed a technique for parametric optimization in that "tremendously reduces the time required for a design cycle, thereby enabling engineers to design the best possible mechanical components quickly and efficiently."

The record also contains a letter from Product Manager – for who asserts that the Petitioner "was the first researcher to develop an evolutionary algorithm able to properly characterize the physical properties of injection molded plastic materials." He states that the Petitioner "used his evolutionary algorithm to create the . . . which allows for injected fiber materials to be parameterized and sent over to the system for full structure calculations under different loading conditions." concludes that this development is "highly significant as a wide variety of mechanical components are built with plastic materials such as automobile engines that use thermoplastic components."

It is unclear how the authors of these letters, as end users of products, know the specific details regarding the Petitioner's contributions to products and how they are independently attributed to him instead of others on the development team. In his letter, Senior Product Manager over the Inventor Product Line, states that "research contributions in our industry are not publicly attributed to the individual, but rather the company and the company's products as a whole." Accordingly, we find that the letters from and do not demonstrate the extent of the Petitioner's original contributions as indicative of being among that small percentage at the very top of the field with sustained national or international acclaim.

The Director concluded that the information from engineering websites about the developments in products does not have probative value because the Petitioner is not named in them. While also states that the media coverage about the company's products "is a result of [the Petitioner's] many original contributions towards topology optimization technology," the record does not demonstrate how the Petitioner's contributions to these products are directly attributable to him apart from the other developers at Therefore, the evidence in the record does not demonstrate that the Petitioner's contributions rise to the level of sustained national or international acclaim.

The record also contains letters from two researchers in the field regarding the Petitioner's work outside of the Director of and the Co-Director of the at the

asserts that the Petitioner "developed a technique for that provides an automated approach for design engineers to study and predict the performance of crankshafts." In addition, a Senior Member of Technical Staff in the at in He indicates that the Petitioner "developed a novel computer program that can design crankshafts of varying dimensions, then create finite elements along them." further notes that the Petitioner's computer program "automated the time-consuming first step of for crankshaft design, making him one of the top researchers in the field of enhancing when he was just a master's student." Neither letter, however, establishes what impact the Petitioner's contribution has had on the field.

The Petitioner submits a letter from the Vice President of who states that "is a major client that relies on [the Petitioner's] improved stress response computation techniques for the software to transition from metal to composite materials without sacrificing strength and durability in airplane parts." also indicates that an oil and gas industry supplier based in Norway, relies on the Petitioner's stress response improvements in the software. However, the record does not specify to what extent the Petitioner contributed to the and software and what aspects can be fully attributed to him as opposed to other developers. Furthermore, the record does not contain evidence from or about their reliance upon this software. uncorroborated statement does not establish the impact of the Petitioner's work on the field.

The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward the top. USCIS has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r. 1994). While the Petitioner need not establish that there is no one more accomplished than him to qualify for the classification sought, we find the record insufficient to demonstrate that he has sustained national or international acclaim and is among the small percentage at the top of his field. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2).

III. CONCLUSION

For the reasons discussed above, the Petitioner has not established eligibility as an individual of extraordinary ability under section 203(b)(1)(A) of the Act.

ORDER: The appeal is dismissed.

Cite as *Matter of R-K-B-*, ID# 658750 (AAO Nov. 21, 2017)