U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF S-Q-J-

DATE: SEPT. 15, 2017

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a business manager, seeks classification as an individual of extraordinary ability in business. *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, concluding that the record did not establish, as required, that the Petitioner met at least three of the ten initial evidence requirements or intended to continue working in his area of expertise.

On appeal, the Petitioner submits additional documents, including a statement regarding how he plans to continue his business partnership, and asserts that the Director gave insufficient weight to the evidence.

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

I. LAW

Section 203(b)(1)(A) of the Act describes qualified immigrants for this classification as follows:

> (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 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).[1] 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).

Finally, the regulation at 8 C.F.R. § 204.5(h)(5) explains the prospective job requirements for this classification:

> *No offer of employment required.* Neither an offer for employment in the United States nor a labor certification is required for this classification; however, the petition must be accompanied by clear evidence that the alien is coming to the United States to continue work in the area of expertise. Such evidence may include letter(s) from prospective employer(s), evidence of prearranged commitments such as contracts, or a statement from the beneficiary detailing plans on how he or she intends to continue his or her work in the United States.

II. ANALYSIS

The Petitioner maintains that he is a business operations expert who is specialized in agriculture, specifically, the mushroom business. The Director determined that the Petitioner did not submit evidence satisfying any of the ten regulatory criteria, of which he must meet at least three. The Director further concluded that the Petitioner did not document that he will continue in his area of extraordinary ability or that his entry will have a substantial prospective benefit to the United States.[2]

[1] This case discusses 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).

[2] There are no regulatory requirements at 8 C.F.R. § 204.5(h) to demonstrate that a petitioner's entry will substantially benefit prospectively the United States. If a petitioner satisfies the initial evidentiary requirements at 8 C.F.R. § 204.5(h)(3) and shows his or her intent to continue working in the area of expertise, absent evidence to the contrary, the individual has met the statutory requirement of establishing his or her entry "will substantially benefit prospectively

On appeal, the Petitioner indicates that the Director afforded insufficient weight to his evidence. For the reasons discussed below, while the Petitioner has now provided the necessary statement explaining his intent to continue in business in the United States, we agree with the Director that the Petitioner has not satisfied any of the regulatory criteria.

A. Intent upon Entry

The Director determined that the Petitioner did not offer evidence to establish how he will continue to work in his area of expertise. *See* section 203(b)(1)(A)(iii) of the Act. On appeal he supplies a statement indicating that he will continue in his partnership with serve as a liaison between the and the American mushroom industry; promote cooperation between the American mushroom industry and international organizations; and, one year after permanently relocating to the United States, form a health food products firm in New York. Accordingly, the Petitioner has demonstrated his intent "to continue work in his area of expertise" pursuant to 8 C.F.R. § 204.5(h)(5).

B. Evidentiary Criteria[3]

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

The Petitioner relies on the following three prizes or awards: the the and the The record contains copies of these awards and letters attesting to their significance. For the reasons discussed below, we find that he has not documented his receipt of qualifying awards in his field of endeavor, which is business.

The record does not establish that the is recognized beyond the issuing authority. The Petitioner submitted a copy of the award and a December 2014 letter from secretary general for the entity that issued the award. On appeal, the Petitioner maintains that is the sole nationwide association of its kind registered with and that the Chinese government appointed this organization as the country's official representative at the The only confirmation of this statement, however, comes from Regardless of status, without evidence of recognition of the

---

the United States." *See* section 203(b)(1)(A)(iii) of the Act.

[3] We have reviewed all of the exhibits the Petitioner has presented and will address those criteria he has identified or for which he has submitted relevant and probative evidence.

[4] The Director's decision raised several concerns about this letter, only one of which the Petitioner addressed on appeal. While the Petitioner offers a translation for the letter's header on appeal, sufficiently resolving the Director's concern with that issue, he has not responded to the inconsistencies relating to the letter's appearance. Specifically, he has not addressed that the typed font in the body of the letter is distinctly different from the font for contact information provided at the end of the letter. In evaluating the record, the truth is to be determined not by the quantity of evidence alone but by its quality. *See Chawathe*, 25 I&N Dec. at 376.

award beyond this organization, such as major or trade media coverage of the selection, the Petitioner has not met his burden of demonstrating that the award is nationally or internationally recognized.

Next, the record lacks evidence verifying that the and the relate to the Petitioner's field of business operations, or are nationally or internationally recognized. Province issued both certificates. deputy director of the Provincial Government, affirms that the province issues based on trade association nominations. He does not specify the bases of eligibility for this award. He then advises that the province issues based on submissions from each city. He does not detail the eligibility requirements. Moreover, as the Director noted, this letter has discrepancies that reduce its credibility, including that name and the address footer are both in a different font and misaligned with the body of the letter. The Petitioner does not respond to these concerns on appeal. In light of the above, he has not satisfied 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.

The Director found that the Petitioner did not satisfy this criterion because he did not corroborate his specific duties for On appeal, he does not challenge the Director's finding or address this criterion. The record contains a letter from affirming that the Petitioner, as deputy president of served as editor of its publication, He, however, did not offer a copy of an issue of this magazine or an official list of its editors. Regardless, as does not detail the duties of this position or explain the types of articles the journal publishes, the Petitioner has not satisfied this criterion.

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

The Petitioner initially maintained that he contributed to his field through leading a number of firms or business groups that have made significant contributions to the United States economy. He also advised that his teams have won "some 20 Chinese Patents," although he has not produced verification of any of them, or letters detailing the role he played on the teams that earned the patents. Before the Director, he relied on two letters from international director and corporate counsel for

On appeal, the Petitioner offers a letter from president of the and no longer relies on his service to teams that developed patents as evidence that he satisfies this criterion. As the Petitioner has not corroborated his role on teams that earned patents, the existence of those patents, and their significance, he has not demonstrated that his activities relating to them rise to the level of contributions of major significance in the field. We will consider the remaining evidence below.

The Petitioner has not sufficiently demonstrated that his involvement in deals with rises to the level of a contribution of major significance in business. The record contains a contract between the Chinese company and in the United States. According to the initial cover letter, a subsidiary of sponsored the Petitioner for a nonimmigrant intracompany transferee petition.[5] affirmed that over a ten-year period, has imported mushrooms through the Petitioner at a rate of approximately $3 million per year, with an anticipated increase to $5 million.[6] The accompanying contract, however, is blank where the date and address should appear. In addition, it indicates that "shall buy such product, at such prices, including discounts (the 'Prices'), over such time period (the 'Term'), and conforming to such specifications (the 'Specifications') as set forth in Exhibit A." The record, however, does not contain this addendum. Finally, the names and titles of the signatories are blank on the signatory page. Regardless, the Petitioner has not demonstrated that negotiating a business deal constitutes an original contribution of major significance in business. At issue is whether he has impacted the field beyond securing customers and suppliers. Neither nor other documentation in the record explains the significance of this contract to the mushroom industry.

Similarly, other evidence in the record is insufficient to show the Petitioner meets this criterion. For example, letter reflects that the Petitioner, in his role as the vice president of the "promoted the scientific cooperation" between and the further states that "as a result [of the Petitioner's efforts], ha[s] received many more scientific literature from and seen an increase in Chinese participation at mushroom biology conferences and membership in does not expand on how the Petitioner's encouragement of increased cooperation between these organizations has significantly impacted the field. Moreover, the record does not contain corroboration of her statements, such as confirmation from an official of lists of Chinese participants at relevant conferences, or information on those who joined documenting the increases. Finally, the Petitioner has provided insufficient evidence regarding the significance of the organization represents, or her own credentials.

Solicited letters from colleagues that do not identify contributions or specific examples of how those contributions influenced the field are insufficient to meet this criterion.[7] *Kazarian v. USCIS*, 580

[5] *See* 8 C.F.R. § 214.2(l)(3)(v).

[6] letter includes the website for The "Our History" page of that website indicates that the company has ' It makes no mention that the company imports mushrooms. *See* Our History, http://www accessed on September 12, 2017, and incorporated into the record of proceedings.

[7] In 2010, the *Kazarian* court reiterated that our conclusion that "letters from physics professors attesting to [a

F.3d 1030, 1036 (9th Cir. 2009), *aff'd in part*, 596 F.3d 1115 (9th Cir. 2010). We have considered all relevant evidence, including reference letters; however, the record does not sufficiently explain how the Petitioner has made original contributions of major significance in the field. Accordingly, he has not established that he meets this criterion.

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

Initially, the Petitioner relied on his role as deputy president of and his service as the deputy chair of the Professional/Technical Committee at as evidence that he met this criterion. On appeal, he mentions his service for the two organizations, and offers the previously discussed letter from A leading role should be evident by its position in the overall organizational hierarchy and accompanied by the role's matching duties. A critical role should be apparent from the Petitioner's impact on the organization or the establishment's activities. To qualify as a critical role, he must exhibit the role is critical for the entity as a whole.

While the Petitioner may have performed a leading or critical role with he has not documented that it has a distinguished reputation, as required under the criterion. explained that the Petitioner served as deputy president and as an editor for monthly trade publication. In addition to serving in these roles, according to the initial cover letter, he occupied the deputy chair position on a committee that evaluated the quality of its professional publications and selected editorial board members. While a certificate reports this appointment, it does not confirm the duties of the position. Even assuming that the Petitioner's duties and title are consistent with a leading or critical role, the record lacks evidence of that organization's reputation. He argues that its designation from the Chinese government confirms the organization's undisputed national recognition. The record, however, does not substantiate this designation. Similarly, even assuming that the Petitioner has performed in a leading or critical role for as its vice president, he has not verified that entity has a distinguished reputation. In light of the above, he has not satisfied 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.

To document a "high salary or other significantly high remuneration for services, in relation to others in the field," the Petitioner must furnish documentation of his own earnings and those of others in his occupation near the top level of the field.[8] He initially relied upon his salary as a

---

petitioner's] contributions in the field" were insufficient was "consistent with the relevant regulatory language." 596 F.3d at 1122.

[8] *See Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994) (considering professional golfer's earnings versus other PGA Tour golfers); *see also 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).

general manager in China and as a nonimmigrant intracompany transferee in the United States as evidence that he met this criterion. He provided a webpage entitled " and a blog that he characterized as a salary survey of executives of startup companies. The record also contains a copy of an April 2014 bank transfer receipt for the payment of 50,000 Renminbi (RMB)[9] from to him for "March Salary." In addition, he supplies material relating to the salary of the average Chinese private sector worker, and the gross domestic product per capita (which measures average income per person within a particular country) for several countries.

The Petitioner has not established his own salary or other remuneration. He initially stated that he had served as a chairperson and board member for a company in the mushroom industry, and as the deputy president and in other positions for Throughout the proceedings, however, he has not corroborated his salary from any specific entity. The record contains a single bank receipt for funds remitted to the Petitioner in 2014 with the notation "March Salary." First, he has not demonstrated his employment with that entity. Second, a single deposit is insufficient to establish that he has commanded a high salary or other significantly high remuneration for services. Finally, while he appears to have worked in the United States, he has not offered documents, such as Internal Revenue Service Forms W-2, to confirm his income.

In addition, the evidence of comparable wages is insufficient. First, the Petitioner initially submitted a salary survey that detailed an average and median monthly salary for those in executive and management positions in China, but he did not identify the origin of this information. Regardless, while the survey provided average or median salary data in executive or management positions, the Petitioner has not explained what qualifies as "high salary or other significantly high remuneration." Second, the record contains a salary survey blog discussing the average salary for chief executive officers (CEO) at funded startup companies. As the Director noted, the Petitioner is not a startup company CEO, nor did he confirm the source of the information posted on the blog. Accordingly, he has not presented sufficient salary information of others in the field that allows us to make a meaningful comparison with his wages. For these reasons, he has not satisfied this criterion.

III. CONCLUSION

The Petitioner is not eligible because he 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). Thus, we need not fully address the totality of the materials in a final merits determination. *Kazarian*, 596 F.3d at 1119-20. Nevertheless, we advise that we have reviewed the record in the aggregate, concluding that it does not support a finding that the Petitioner has established the level of expertise required for the classification sought.

[9] On appeal, the Petitioner resolves the Director's concern about this currency, documenting that RMB is the same currency as the Chinese Yuan (CNY).

ORDER: The appeal is dismissed.

Cite as *Matter of S-Q-J-*, ID# 74195 (AAO Sept. 15, 2017)