U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF N-M-B-

DATE: JAN. 30, 2018

APPEAL OF TEXAS SERVICE SENTER DECISION

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

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

On appeal, the Petitioner submits a brief and additional documentation, stating that the Director misapplied the appropriate standard of proof, and erred in not issuing an additional request for evidence prior to adjudication.[1] He claims that he meets at least three criteria, and maintains that he has established eligibility for the classification.

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

I. LAW

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

[1] As to the perceived error in the Director's failure to issue an additional request for evidence (RFE), we note that there is no requirement for U.S. Citizenship and Immigration Services (USCIS) to issue an RFE or to issue an RFE pertinent to a ground later identified in the decision denying the visa petition. The regulation at 8 C.F.R. § 103.2(b)(8) permits the Director to deny a petition for failure to establish eligibility without having to request evidence regarding the ground or grounds of ineligibility identified by the Director. Also, even if the Director had erred as a procedural matter in not issuing an RFE or NOID relative to the Petitioner's lack of evidence, it is not clear what remedy would be appropriate beyond the appeal process itself. We conduct appellate review on a *de novo* basis.

> (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,
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> (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 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, 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

The Petitioner is a civil engineer in the petroleum industry. Because the Petitioner has not indicated or established that he has received a major, internationally recognized award, he must satisfy at least three of the ten criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). In denying the petition, 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 that he failed to meet a third, required criterion. On appeal, the Petitioner maintains that, in addition to the judging and leading or critical role criteria, he meets 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), the high salary criterion

under 8 C.F.R. § 204.5(h)(3)(ix), and the commercial success criterion under 8 C.F.R. § 204.5(h)(3)(x).

Except where a different standard is specified by law, a petitioner must prove eligibility for the requested immigration benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Under the preponderance of the evidence standard, the evidence must demonstrate that the petitioner's claim is "probably true." *Id.* at 376. We will 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.

If a petitioner submits relevant, probative, and credible evidence that leads us to believe that the claim is "more likely than not" or "probably" true, he has satisfied the standard of proof. Stated another way, a petitioner must establish that there is greater than a fifty percent chance that a claim is true. Here, we have reviewed all of the evidence in the record, and conclude that it does not support a finding that the Petitioner meets the plain language requirements of at least three criteria.

> *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 record contains evidence reflecting that the Petitioner served on jury panels to review civil engineering theses of university students. Therefore, 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).

In order to satisfy the plain language of this regulatory criterion, the Petitioner must demonstrate that his contributions are not only original, but also "of major significance in the field." The Petitioner asserted that his original approach to industry development has rendered him "quite famous," and that he has presented his approach at numerous conferences around the world. Participation in conferences demonstrates that his findings were shared with others and may be acknowledged as original based on their selection for presentation. The record, however, does not show that his presentations have been frequently cited by other researchers or have otherwise significantly impacted the field.

He further claimed that his large-scale project development and structural safety protocol designs are "now used around the world." He concluded that his designs and development work constitute original contributions, and submitted numerous letters in support of this assertion.

For example, a letter from [redacted] former President of [redacted] states that the Petitioner developed special technical programs, such as the "Tank Settlement Study," that "greatly benefited" [redacted] their joint employer at the time. She further

claimed that other programs he developed, such as the [redacted] revolutionized storage designs for petroleum and "became standard around the country." Although she claimed that these designs "are now all mandatory and implemented across the country and in many countries abroad," no independent, objective evidence corroborating this claim was submitted. The record does not document that these designs have widely impacted the field, so as to demonstrate original contributions of major significance. *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 corroborate her impact in the field as a whole).

[redacted] and [redacted] both former colleagues of the Petitioner at [redacted] submitted letters of recommendation. [redacted] praises the Petitioner, stating that he is an "outstanding engineer" with a "broad spectrum of knowledge never seen before." [redacted] stated that the Petitioner has managed and overseen numerous projects for [redacted] noting that he has been "an incredible asset in guiding and advising other professionals in the field."

A letter from [redacted] Business Manager of [redacted] and former [redacted] employee, claimed that he worked on numerous endeavors with the Petitioner such as the [redacted] and the [redacted] projects. He noted that such projects were well conceptualized and saved [redacted] approximately $1 billion. He claimed that "oil and gas projects of this magnitude had never before been achieved in Venezuela."

Although these letters make several assertions of his achievements, the Petitioner did not provide accompanying evidence to corroborate the claims, and the letters lack specificity of how his achievements have affected the field or that the asserted achievements are being used or reproduced within his field. While such letters are important in providing details about the Petitioner's role in various projects, they cannot by themselves establish the Petitioner's acclaim beyond his immediate circle of colleagues. Vague, solicited letters from local colleagues that do not specifically identify contributions or provide specific examples of how those contributions influenced the field are insufficient. *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009) *aff'd in part* 596 F.3d 1115 (9th Cir. 2010). In 2010, the *Kazarian* court reiterated that our conclusion that "letters from physics professors attesting to [the alien's] contributions in the field" were insufficient was "consistent with the relevant regulatory language." 596 F.3d at 1122.

In addition, the letters considered above primarily contain attestations of the Petitioner's achievements in the field without providing specific examples of how his contributions rise to a level consistent with major significance. Letters that repeat the regulatory language but do not explain how an individual's contributions have already influenced the field are insufficient to meet this criterion. *Kazarian*, 580 F.3d at 1036, *aff'd in part* 596 F.3d at 1115. USCIS need not accept primarily conclusory statements. *1756, Inc. v. The U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.C. Dist. 1990). As a result, the Petitioner has not met his burden of showing that he has made original contributions of major significance in the field.

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 claimed that he has published more than 40 technical reports, and at least four international reports regarding his findings and developments in seismic risk and safety protocols, copies of which were submitted into the record. He asserted that all of these reports "were circulated among thousands of engineers and officials of " The record, however, does not establish that these reports appeared in professional or major trade publications or other forms of major media. Furthermore, the Petitioner has not demonstrated that these reports are equivalent to scholarly articles, as contemplated by the regulatory language.

He submitted a letter from Ph.D., Professor at the who claimed that he wrote a paper with the Petitioner in 1993 in the in Venezuela. also claimed that the Petitioner wrote a second paper individually during that time. The record does not contain the papers or information related to their publication to corroborate claims.

The Director determined that the Petitioner did not meet this criterion and the record supports this finding. Specifically, while the Petitioner has submitted some evidence of his authorship, he has not established that his reports and papers constitute "scholarly articles" or have appeared in "professional or major trade publications or other major media." On appeal, he merely contends that the evidence submitted in support of the petition satisfied this criterion "by a preponderance of the evidence," and presents no new qualifying evidence. He therefore does not meet this 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 Petitioner submitted evidence demonstrating that he served as a Director and Member of the Board for Engineering and Construction Section, as well as serving as the Leader of the Control Committee. He established that as a high-level engineering director, he orchestrated negotiations and joint ventures for the benefit of the company. Consequently, the Director determined that the Petitioner satisfied this criterion, and we agree with that finding.

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).

The Petitioner stated that he served as Director and Member of the Board for Engineering and Construction Section. Further, he claimed that "as one of the top experts in Petroleum Engineering in the Oil and Gas Industry," he commanded a high salary in relation to others in the field.

In support of the petition, he submitted six documents that appear to be internal records; however, they are in Spanish and are not accompanied by certified translations. Any document in a

foreign language must be accompanied by a full English language translation. 8 C.F.R. § 103.2(b)(3). The translator must certify that the English language translation is complete and accurate, and that the translator is competent to translate from the foreign language into English. Id. Because the Petitioner did not submit a properly certified English language translation of the document, we cannot meaningfully determine whether the translated material is accurate and thus supports the Petitioner's claims.

He also submitted a document entitled "Extract Translation of Employment Contract.." Although it contains the required certification from the translator, there is no original Spanish language employment contract; therefore, the uncertainty about this document's origin, and the claims therein, cannot serve as evidence of the Petitioner's claimed high salary. Moreover, based on the title of the document, it appears to be only an extract of a document and not a complete translation as required by 8 C.F.R. § 103.2(b)(3).

The Petitioner also submitted excerpts from the U.S. Bureau of Labor Statistics' (BLS) Occupational Employment and Wages Report for May 2015, which demonstrates that petroleum engineers in earned a median salary of $149,590 during that time. We note the Director's determination that this data was not persuasive because it dealt with salary statistics for U.S. workers, and not those of similarly-employed individuals in Venezuela, and we concur with that determination. The Petitioner must submit evidence of earnings in comparison with those performing similar work. *Matter of Price*, 20 I&N Dec. 953, 955 (Assoc. Comm'r 1994); *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). The Associate Commissioner in *Matter of Price* compared the alien's monetary earnings with his rankings among those in the top of his field performing similar work. Notably the Associate Commissioner compared the alien's 1991 winnings to the remaining Professional Golfers' Association Tour during the same year. *Matter of Price*, 20 I&N Dec. at 955. Therefore, the Petitioner must compare his income with income earned by those in his field during the same time period.

Here, the greater problem is that the Petitioner claims to have served as a Director and Board member of [redacted] a high-ranking executive position, and repeatedly uses the term "oil director" when discussing his position. The BLS data submitted, however, applies to petroleum engineers, not high-ranking oil executives such as the Petitioner.[2]

[2] For example, the BLS's *Occupational Outlook Handbook* indicates that petroleum engineers "design and develop methods for extracting oil and gas below the Earth's surface" and "find new ways to extract oil and gas from older wells." *See* Bureau of Labor Statistics, U.S. Department of Labor, Occupational Outlook Handbook, Petroleum Engineers, on the Internet at https://www.bls.gov/ooh/architecture-and-engineering/petroleumengineers.htm (visited Jan. 9, 2018). It is apparent, therefore, that the occupation for which the Petitioner provided salary data applies to petroleum engineers that primarily engage in field work by visiting drilling or well sites to implement these methods, which are not tasks the Petitioner performed as Director and Board member of [redacted], where his stated duties include "organizational restructuring initiatives" and "fiscal streamlining of the Engineering and Construction department."

In response to the Director's request for evidence (RFE), he submitted new documentation, including a letter from President, stated that it is within the company's charter "to base compensation off of the official tabulator for average and basic salaries." He further attested that the Petitioner held a "Professional Classification of P10" but received a much higher base salary (240,999.50 Bolivar) than the average P10 base salary (167,860.00 Bolivar) for his services. In addition, he stated that his total benefits package (705,598.56 Bolivar) was much higher than the average base salary and benefits package for P10 employees (384,735.12 Bolivar), as reported by the This assertion is accompanied by a certified "Salary Extract Translation," that translates only one line out of a full-page chart submitted on the letterhead of the

The evidence submitted by the Petitioner to demonstrate he meets this criterion lacks the required full and certified translations or the original foreign language documents. Thus, we cannot meaningfully determine if the record supports his claims regarding his compensation and its relation to others in the field.

The Petitioner is undoubtedly one of numerous oil executives at and in the petroleum field in general, yet he submitted no evidence demonstrating that his salary is higher than those similarly ranked colleagues. Merely claiming that he earns above the average base salary is not sufficient, absent evidence of the salary of similarly-employed oil executives in the industry.

Finally, as noted by the Director, the Spanish documents submitted in support of the petition, which were not accompanied by certified translations, indicate different base salaries for the Petitioner. Based on a reading of the dates, it appears that an internal document dated July 11, 2016 lists his base salary as 172,142.50, whereas a second document dated July 28 lists it as 240,999.50. Although the Director noted these discrepancies, the appeal contained no new clarifying information. The Petitioner is obligated to clarify the inconsistent and conflicting testimony by independent and objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The evidence the Petitioner submits does not establish that he has received a high salary or other significantly high remuneration for services in relation to others in the field. Accordingly, the Petitioner has not demonstrated that he meets this criterion.

> *Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.* 8 C.F.R. § 204.5(h)(3)(x).

This criterion anticipates a petitioner will establish eligibility through volume of sales or box office receipts as a measure of his commercial success in the performing arts. The Director determined that the Petitioner did not meet this criterion and the record supports this conclusion.

The Petitioner, a civil engineer and oil executive, did not submit evidence that he has achieved commercial success in the performing arts. On appeal, he asserts that the Director erred by failing to

consider comparable evidence submitted in support of this criterion; namely, evidence of technical reports the Petitioner published, seminars he conducted, and expert opinion letters attesting to his extraordinary ability.

His arguments, however, are not persuasive. The comparable evidence regulation at 8 C.F.R. § 204.5(h)(4) requires that a petitioner demonstrate why a specific criterion is not readily applicable to his occupation, and how the submitted evidence is comparable to that criterion. Here, the Petitioner does not explain why this criterion does not apply to a civil engineer, nor does he identify how the documentation provided is comparable. Further, an inability to meet a criterion does not necessarily mean that the criterion does not apply to a petitioner's occupation. Accordingly, the Petitioner has not established that he meets the requirements of the provision at 8 C.F.R. § 204.5(h)(4). Consequently, he has not shown that he satisfies the plain language of this criterion.

III. CONCLUSION

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. As a result, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. Nevertheless, 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. For the foregoing reasons, the Petitioner has not shown that he qualifies for classification as an individual of extraordinary ability.

ORDER: The appeal is dismissed.

Cite as *Matter of N-M-B-*, ID# 876394 (AAO Jan. 30, 2018)