U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

MATTER OF R-V-O-A-

DATE: JULY 18, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, an insurance chief executive officer (CEO), 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 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 documentation and a brief, arguing that he meets at least three of the ten 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). If that petitioner does not submit this evidence, then 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). The regulation at 8 C.F.R. § 204.5(h)(4) allows a petitioner to submit comparable material if it is able to demonstrate that the standards at 8 C.F.R. § 204.5(h)(3)(i)-(x) do not readily apply to a beneficiary's occupation.

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 CEO for [redacted] in [redacted] Azerbaijan. Because he has not indicated or 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). In denying the petition, the Director found that the Petitioner met only two of the initial evidentiary criteria, published material under 8 C.F.R. § 204.5(h)(3)(iii) and judging under 8 C.F.R. § 204.5(h)(3)(iv). The record contains an article posted on a major medium website about the Petitioner. In addition, the Petitioner served as a judge for a contest regarding young entrepreneurs. Accordingly, we agree with the Director that the Petitioner satisfied the published material and judging criteria.

On appeal, the Petitioner maintains that he meets four additional criteria, discussed below. We have reviewed all of the evidence in the record and conclude that it does not support a finding that the Petitioner satisfies the plain language requirements of at least three criteria.

*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 contends that his receipt of a [redacted] meets this criterion. In order to satisfy this criterion, a petitioner must demonstrate that his prizes or awards are nationally or internationally recognized for excellence in the field.[1] The record contains promotional material and two letters from [redacted] CEO of the [redacted] who described the history, purpose, and evaluation criteria for the awards. For example, [redacted] stated that "[a]ny person regardless of her or his age, gender, or social status may submit her/his request to participate" and "[t]he [redacted] nominates about 50 potential laureates, selected by the jury among the applicants, based on our constitutional documents and practices." Here, the promotional material and letters do not show that the [redacted] are nationally or internationally recognized for excellence in the field, nor does the record include other evidence demonstrating such recognition. Accordingly, the Petitioner did not establish that he fulfills this criterion.

*Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.* 8 C.F.R. § 204.5(h)(3)(ii).

The Petitioner claims eligibility for this criterion based on his memberships with the [redacted] of the [redacted] and the [redacted] In order to meet this criterion, the Petitioner must show that membership in the association is based on being judged by recognized national or international experts as having outstanding achievements in the field for which classification is sought.[2]

As it relates to [redacted] the Petitioner presented a letter from [redacted], vice president of [redacted], who indicated that the organization's bylaws state that "an individual . . . who meets and accepts the requirements of the Confederation Bylaw, paid a membership fee, engaged in entrepreneurial activities, and has achieved significant success in its field of entrepreneurship can be a member." Further, he offered a letter from [redacted] secretary general of [redacted] who stated that [redacted] is an active member of the [redacted] a self-governing public union, and membership "may be awarded only to a person, who has outstanding achievements in business and recognized expert in his field, determined by the Board of Trustees." Regarding [redacted] the Petitioner provided a screenshot from [redacted] website reflecting that it is also a public union organization and letters from [redacted] acting chairman of [redacted] who mentioned the bylaws and

[1] *See* USCIS Policy Memorandum PM 602-0005.1, *Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator's Field Manual (AFM) Chapter 22.2, AFM Update AD11-14* 6 (Dec. 22, 2010), https://www.uscis.gov/policymanual/HTML/PolicyManual.html.

[2] *See* USCIS Policy Memorandum PM-602-0005.1, *supra*, at 6.

stated that "[t]he main criteria for admission . . . are deep knowledge and experience in the sphere of business development" and "significant contribution to the development of insurance business through the creation of demanded insurance products."

In a request for evidence the Director instructed the Petitioner to submit the bylaws to corroborate the statements in the letters[3], but he did not comply. *See* 8 C.F.R. § 103.2(b)(14) (providing that the failure to submit requested evidence which precludes a material line of inquiry shall be grounds for denying the benefit request). On appeal, the Petitioner argues that "[b]ecause the translation of the bylaws of each association . . . is a time-consuming and extremely bureaucratic procedure, the translations of the whole bylaws may not be provided."[4] Without the bylaws, the Petitioner has not met his burden of demonstrating that or requires outstanding achievements as judged by recognized national or international experts consistent with this regulatory criterion.[5]

> *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).

The Petitioner argues that he provided reference letters establishing his eligibility for this criterion. In order to satisfy the regulation at 8 C.F.R. § 204.5(h)(3)(v), a petitioner must establish that not only has he made original contributions but that they have been of major significance in the field. For example, a petitioner may show that the contributions have been widely implemented throughout the field, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance.

In reviewing his recommendation letters, the authors make unsupported claims regarding the Petitioner's creation of various websites without providing detailed, specific information demonstrating the impact in the overall field.[6] For instance, chairman of , stated that "attracted about a million regular users per year," and "became the most popular project among people who love an active lifestyle, nightlife and entertainment."[7] Moreover, CEO of indicated that "significantly influenced the increase in purchases of insurance products among the population; made people more protected and improved their quality of life." In addition,

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[3] Repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, No. 95 CIV. 10729, *1, *5 (S.D.N.Y. Apr. 18, 1997). Here, the submitted letters assert that the bylaws include language mirroring the language of the regulations, but the record does not include corroborating documentation.

[4] Any document in a foreign language must be accompanied by a full English language translation. 8 C.F.R. § 103.2(b)(3).

[5] *See* USCIS Policy Memorandum PM-602-0005.1, *supra*, at 7 (stating that relevant factors that may lead to a conclusion that membership was not based on outstanding achievements include years of experience in a particular field, payment of a subscription fee, or employment in certain occupations).

[6] *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8-9; *see also 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).

[7] Although we discuss a sampling of letters, we have reviewed and considered each one.

managing partner of [redacted] concluded that the Petitioner's "projects have gathered around a million users and created a completely new Internet infrastructure." Here, the authors did not explain how they were aware of the influence of the websites, such as the asserted effect on overall sales of insurance products, nor did they reference any material to support their assertions. Furthermore, the Petitioner did not provide any corroborating evidence showing the significant effect of his websites on the greater field.

The letters considered above primarily contain attestations of the Petitioner's status in the field without providing specific examples of contributions that 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 establish original contributions of major significance in the field. *See Kazarian*, 580 F.3d at 1036, *aff'd in part* 596 F.3d at 1115. Moreover, 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). For these reasons, the Petitioner has not demonstrated that he meets 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.* 8 C.F.R. § 204.5(h)(3)(ix).

Initially, the Petitioner provided a letter from [redacted] chairman of the management board of [redacted], who stated that the Petitioner earned $84,615 per year while employed at [redacted] from July 2012 to April 2014.[8] The Director found that the Petitioner did not submit supporting documentation, such as payroll records or income tax documentation, confirming his salary. On appeal, the Petitioner presents documentation from the [redacted] under the [redacted] reflecting that he earned approximately $40,000 from [redacted] in 2013. He did not explain the inconsistency between his claimed earnings as reported by [redacted] and those he reported to the Azerbaijan government. Moreover, in order to compare his salary to others in the field, the Petitioner offered a letter from [redacted] acting chairman of the management board at [redacted] who claimed that the yearly income of the deputy chairman is $24,000. The Petitioner did not explain how he purportedly earned $84,615/$40,000 as the deputy chairman of [redacted] when the salary of the position is $24,000 per year. The Petitioner must resolve these inconsistencies in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). As there are conflicting reports of his salary as deputy chairman, the Petitioner has not established his earnings.[9]

In addition, the Petitioner has not provided sufficient comparative data regarding the compensation of others in the field. The record contains letters indicating the actual salaries of deputy chairmen at

[8] [redacted] ndicated that [redacted] merged into [redacted] in 2016.

[9] We note that the Petitioner provided a job letter from [redacted] chief financial officer for [redacted] who stated that the Petitioner's income is $55,000 per year as CEO; however, he did not present any supporting evidence of his income.

two companies, [redacted] ($41,000) and [redacted] ($33,600). Furthermore, the Petitioner provided evidence reflecting the average salaries of deputy chairmen at other companies in Azerbaijan, such as [redacted] ($24,700) and [redacted] ($18,000 - $40,000). The submission of these average salary statistics, as well as a selective sample of positions, does not establish that the Petitioner commands a high salary in relation to others in his 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 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). For these reasons, the Petitioner did not show that he satisfies 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 advise that we have reviewed the record in the aggregate, concluding that it does not support a finding that the Petitioner has established the acclaim and recognition required for the classification sought.

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). Here, the Petitioner has not shown that the significance of his work is indicative of the required sustained national or international acclaim or that it is consistent with a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate that the Petitioner has garnered national or international acclaim in the field, and he is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2).

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 R-V-O-A-*, ID# 1838345 (AAO July 18, 2018)