U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF P-S-D-L-

DATE: MAR. 13, 2018

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a chief mechanic specializing in luxury and exotic automobiles, 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 not satisfied any of the ten initial evidentiary criteria, of which he must meet at least three.

On appeal, the Petitioner presents additional evidence and asserts that he meets at least three of the ten criteria. In addition, he contends that the Director imposed an overly high standard of proof and did not properly consider all of the evidence. With respect to the standard of proof in this matter, a petitioner must establish that he meets each eligibility requirement of the benefit sought by a preponderance of the evidence. *Matter of Chawathe*, 25 I& N Dec. 369, 375-76 (AAO 2010). In other words, a petitioner must show that what he claims is "more likely than not" or "probably" true. To determine whether a petitioner has met his burden under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Id.* at 376; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989).

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). The regulation at 8 C.F.R. § 204.5(h)(4) allows a petitioner to submit comparable material if he or she is able to demonstrate that the standards at 8 C.F.R. § 204.5(h)(3)(i)-(x) do not readily apply to his or her 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. at 376.

II. ANALYSIS

At the time of filing, the Petitioner was working as chief mechanic for [redacted] in [redacted] Florida. As 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 did not meet any of these criteria. On appeal, the Petitioner claims that he meets the published material, original contributions, leading or critical role, and high salary criteria.[1] In addition, he requests that we consider comparable evidence for the awards and membership criteria.[2] For the reasons discussed below, the record does not support a finding that the Petitioner satisfies at least three criteria.

[1] These four criteria correspond to the categories of evidence at 8 C.F.R. § 204.5(h)(3)(iii), (v), (viii), and (ix), respectively.

[2] These two criteria correspond to the categories of evidence at 8 C.F.R. § 204.5(h)(3)(i) and (ii), respectively.

A. Evidentiary 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 record includes a letter from technical director of the a professional team that represented in a variety of competitions in Brazil and worldwide. states that the Petitioner "was invited to work as a lead mechanic during the competitions" and that his responsibilities included "fuel and tire changes" and one race where he "was in charge of the motor and shift." In addition, asserts that the Petitioner was a "key player" in the first place victories at the (2011), (2010), (2010), (2010), (2010), and (2010).

The Petitioner maintains that he was "instrumental" to the first place victories and that his involvement is "comparable evidence" of his receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor. The evidence includes an 2011 blog posted at http:// which states that the " team, with and ' won the Another blog posted at http:/ in 2010 mentions that and won the "first stage of the of 2010" in The record also contains a 2010 article in indicating that the won at at The Petitioner, however, has not provided sufficient documentation regarding the aforementioned websites' readership to demonstrate that such press coverage is indicative of national or international recognition. In addition, the articles do not discuss the team's racing awards' level of recognition in Brazil or internationally.[4] The evidence therefore is not sufficient to show that first place victories constitute nationally or internationally recognized prizes or awards for excellence in the field.

Furthermore, the regulation at 8 C.F.R. § 204.5(h)(4) allows for the submission of "comparable evidence" if the ten categories of evidence "do not readily apply to the beneficiary's occupation." It is the petitioner's burden to explain why the regulatory criteria are not readily applicable to an individual's occupation and how the evidence submitted is "comparable" to the objective evidence required at 8 C.F.R. § 204.5(h)(3)(i)-(x). Here, the Petitioner has not explained or demonstrated that the criterion at 8 C.F.R. § 204.5(h)(3)(i) does not readily apply to race car mechanics or those

[3] The record reflects that the team's race cars were driven by and

[4] Nor do these articles mention the Petitioner as lead mechanic. We will further address the submitted articles and blogs under the published material criterion at 8 C.F.R. § 204.5(h)(3)(iii).

specializing in luxury and exotic automobiles. As such, the Petitioner has not shown that he may rely on comparable evidence. In addition, while the record reflects the Petitioner served in an important position for [redacted] he has not demonstrated that awards won by this team's drivers are comparable to the regulation at 8 C.F.R. § 204.5(h)(3)(i) which requires evidence of his receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field. The Petitioner has not shown the evidence he claims as comparable to the regulation at 8 C.F.R. § 204.5(h)(3)(i) is of the same caliber as that required by the regulation. Accordingly, he has not satisfied this criterion by meeting its plain language requirements or through the submission of comparable evidence.

> *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).

As evidence under this criterion, the Petitioner submitted his [redacted] and [redacted] training passports listing the various courses he completed at these companies' automotive training centers. In addition, he provided his online automotive course history and multiple [redacted] and [redacted] technical training certificates. The record also includes certificates indicating that he completed training programs offered by [redacted] and [redacted] He further offered recommendation letters from the [redacted] automotive dealership (Brazil), [redacted] and car owners in Florida and Brazil who entrusted him with the care and maintenance of their vehicles. For example, the letter from [redacted] explains that the Petitioner took automotive courses "on specific models of the [redacted] brand" and that he was "the only one certified in Brazil on the model [redacted]." Similarly, [redacted] a partner at [redacted] notes that the Petitioner is "one of the few in the world to be certified to work on . . . the [redacted] a hybrid model that costs around $1.5 million dollars." The Petitioner, however, has not demonstrated completing specialized technical training in his trade constitutes membership in associations requiring outstanding achievements, as judged by recognized national or international experts.

The Petitioner alternately contends that his highly specialized mechanic training is comparable evidence for the membership criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(4). He notes that he was selected to participate in a [redacted] advertising campaign in Brazil. The Petitioner provides a letter from the marketing director of the [redacted] automotive dealership stating that he took part in a Brazilian commercial for "[redacted]" and was responsible for "positioning of cars, including driving the cars during the recordings." In addition, the record includes a letter from [redacted] commercial director, indicating that the Petitioner was chosen as a mechanic for the [redacted] through the interior of Brazil.[5]

[5] [redacted] letter explains that automotive journalists drove the [redacted] and [redacted] "so they could write articles about the new models." The record also includes copies of the automotive journalists' articles about

The Petitioner, however, has not explained or demonstrated that the criterion at 8 C.F.R. § 204.5(h)(3)(ii) does not readily apply to automobile mechanics. Moreover, he has not shown that completing technical training in his trade, providing logistical and technical support for the advertising campaign, and serving as a mechanic for the in Brazil are comparable to the regulation at 8 C.F.R. § 204.5(h)(3)(ii) which requires evidence of his membership in associations in the field that require outstanding achievements of their members, as judged by recognized national or international experts. For instance, while the aforementioned and promotional campaigns required specialized technical skills from an experienced automotive mechanic, the record does not indicate that they required outstanding achievements. The Petitioner has not demonstrated the evidence he claims as comparable to the regulation at 8 C.F.R. § 204.5(h)(3)(ii) is of the same caliber as that required by the regulation. He therefore has not established that he satisfies this criterion by meeting its plain language requirements or through the submission of comparable evidence.

> *Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.* 8 C.F.R. § 204.5(h)(3)(iii).

The record includes an article in entitled ' but the material was incomplete, and its author was not provided as required by the plain language of this regulatory criterion.[6] In addition, the Petitioner submitted an article in entitled ' ' an article in entitled ' and two articles in entitled was tamed quickly" and "Two Brazils." These articles were written about the cars' road performance on the through Brazil rather than the Petitioner.[7] The plain language of the regulatory criterion requires "published material about the alien." 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).

In addition, as previously mentioned under the awards criterion, the Petitioner provided an 2011 blog posted at http an 2010 blog posted at http: and a 2010 article in These articles, however, are not about him and the evidence does not show that the aforementioned

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these new car models.

[6] The Petitioner did not submit the first page of this article. The part that was included notes that it was a "continuation of page 1."

[7] These articles only mention the Petitioner in passing. For example, in the Petitioner appears only in a captioned photograph, but is not discussed in the main text of the article. In addition, the article in only briefly references the Petitioner as "the technical mechanic."

websites are major trade publications or other major media. While the record includes a report from the [redacted] indicating that [redacted] "is the [redacted] newspaper" in Brazil in terms of subscription, thus qualifying it as a form of major media, none of the remaining publications or websites listed above are identified in this report.[8] The Petitioner also offers [redacted] statistical summaries of daily visitors and page views for the aforementioned publications, but he has not established that this information elevates them to major media relative to other newspapers or online publications. Regardless, we find that the articles submitted for this criterion are not about the Petitioner. Based on the foregoing, the Petitioner has not demonstrated that he meets this regulatory criterion.

> *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).

As evidence under this criterion, the Petitioner provided various recommendation letters. The Director considered these letters and concluded that, although they discussed the Petitioner's specialized skills and automotive expertise, they were insufficient to establish that his work rises to the level of original contributions of major significance in the field. For the reasons discussed below, we agree with that determination.

The Petitioner contends that his mechanical support and technical expertise for the [redacted] promotional driving tour through Brazil's interior meets this criterion. His evidence includes the aforementioned recommendation letter from [redacted] discussing the Petitioner's involvement in this marketing project to promote [redacted] models. [redacted] states: "[The Petitioner's] performance during the course of the journey, giving all technical support and mechanical support, were extremely important for the success of this trip. . . . This event was one of the main reasons for the growth of sales of the brand in Brazil." In addition, the record contains newspaper articles that mentioned the Petitioner was the mechanic for this promotional driving tour.[9] While the Petitioner's mechanical assistance and technical skills helped ensure the success of [redacted] marketing project, the record does not show that his contributions were considered "of major significance in the field" rather than mainly affecting this one company's luxury car sales in Brazil.

Additionally, the Petitioner contends that his expertise as a mechanic contributed to [redacted] and the [redacted] first place victories. In his letter of support, [redacted] indicates that the Petitioner "used his superior skills to make sure that the cars were safe and quickly maintained during each pit stop." [redacted] further notes that "in the 2011 [redacted] we noticed that the road was still a bit damp after the rain" and the Petitioner "suggested that we use the rain tires instead of the regular ones." According to [redacted] the Petitioner's "strategic decision paid off" and the team "took first place due in part to our rain tires." Furthermore, [redacted]

[8] The [redacted] report ranks the top [redacted] newspapers in Brazil based on their number of subscribers.
[9] These articles were discussed earlier under the published material criterion at 8 C.F.R. § 204.5(h)(3)(iii).

stated that the Petitioner served on his race car "staff as a specialized automotive technician" and helped the team "achieve excellent competition results."[10]

With regard to and the victories, the record does not establish that the Petitioner's work for the and meets the plain language of this criterion. The evidence does not indicate that their racing awards or success were attributable to an original contribution by the Petitioner that held major significance in the sport or auto industry. For the above reasons, the Petitioner 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.* 8 C.F.R. § 204.5(h)(3)(viii).

As lead mechanic for the we find that the Petitioner has performed in a critical role for an organization with a distinguished reputation. The record includes a letter from the team's technical director discussing the Petitioner's specific responsibilities and stating that he "played a key role" the team's racing successes. In addition, the Petitioner offers various articles that suffice to demonstrate that the has garnered a distinguished reputation. Accordingly, the Petitioner has established that he meets this criterion and the Director's finding on this issue is withdrawn.

> *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 submitted a printout from the search website listing results for "New Auto Mechanics Manager Salaries in Brazil . . . with an average salary of R$2,484" per month. On appeal, the Petitioner states: "[T]he Director improperly concluded that this was information pertaining to a 'mechanic who has been recently hired.' However, as the document demonstrates, 'New Auto Mechanics' is the name of the employer and not a position for new mechanics." As the Petitioner's 2014 tax return from Brazil reflects that he earned R$76,359 (or R$6,363 monthly), he contends that the salary information shows he has commanded a high salary. Assuming that the Petitioner's argument is correct and that "New Auto Mechanics" is the employer name rather than the position title, then the information provided would pertain only to this company's "Manager Salaries." Average salary information limited to a single Brazilian employer is not a proper basis for comparison in demonstrating that the Petitioner has received a high salary relative "to others in the field."

In addition, the Petitioner asserts that his "$54,000 salary in the United States at . . . is much higher than the median salary of $38,740[11] for mechanics in the United States as reported by the U.S. Department of Labor's *Occupational Outlook Handbook*" (*OOH*). The record includes

[10] The record includes articles documenting and the competitive victories.

[11] We note the dollar amount indicated in the Petitioner's statement is incorrect. The *OOH* printout contained in the record lists "2016 Median Pay" of "$38,470 per year" for automotive service technicians and mechanics.

salary information from the *OOH* stating that "[t]he median annual wage for automotive service technicians and mechanics was $38,470 in May 2016" and that "the highest 10 percent earned more than $64,070." This information reflects that the Petitioner's $54,000 U.S. salary is above the median, but well below the top decile in his field, and therefore not indicative of a high salary relative to others in the field.

Finally, we note that the letter from the Petitioner's employer and other information in the record identify him as a "chief mechanic" specializing in luxury and exotic cars. As such, he must present evidence showing that he has earned a high salary or significantly high remuneration in comparison with those performing similar services in the 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 Skokos v. U.S. Dept. of Homeland Sec.*, 420 F. App'x 712, 713-14 (9th Cir. 2011) (finding salary information for those performing lesser duties is not a comparison to others in the field); *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). Here, the Petitioner has not established that the wage information he presented constitutes an appropriate basis for comparison. Based on the foregoing, the Petitioner has not demonstrated that he meets this regulatory criterion.

B. O-1 Nonimmigrant Status

We note the record of proceedings reflects that the Petitioner received O-1 status, a classification reserved for nonimmigrants of extraordinary ability. Although USCIS has approved at least one O-1 nonimmigrant visa petition filed on behalf of the Petitioner, the prior approval does not preclude USCIS from denying an immigrant visa petition which is adjudicated based on different standard – statute, regulations, and case law. Many Form I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Brothers Co. Ltd.*, 724 F. Supp. at 1103. Furthermore, our authority over a USCIS service center, the office responsible for adjudicating the nonimmigrant visa petition, is comparable to the relationship between a court of appeals and a district court. Even if a service center director has approved a nonimmigrant petition on behalf of an individual, we are not bound to follow that finding in the adjudication of another immigration petition. *La. Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, at *2 (E.D. La. 2000). Here, for the reasons discussed above, the Petitioner has not established eligibility for immigrant classification as an individual of extraordinary ability under section 203(b)(1)(A) of the Act.

III. CONCLUSION

The Petitioner is not eligible because he has not submitted the required initial evidence of either a qualifying 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 do not need to fully address the totality of the materials in a final merits determination. *Kazarian*, 596 F.3d at 119-20.[12] 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.

ORDER: The appeal is dismissed.

Cite as *Matter of P-S-D-L-*, ID# 1087463 (AAO Mar. 13, 2018)

[12] In addition, as the Petitioner has not established his extraordinary ability under section 203(b)(1)(A)(i) of the Act, we need not determine whether he is coming to "continue work in the area of extraordinary ability" under section 203(b)(1)(A)(ii).