U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF T-G-, INC.

DATE: MAR. 15, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, an apparel retail company, seeks to classify the Beneficiary as an "alien 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 petition, concluding that the Petitioner had not established that the Beneficiary satisfies at least three of the ten initial evidentiary criteria, of which she must meet at least three. The Petitioner subsequently filed a motion to reconsider, which the Director denied.

On appeal, the Petitioner submits a brief, asserting that the Beneficiary meets the necessary criteria and has shown her eligibility for the classification.

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).

II. ANALYSIS

The Beneficiary is a technical designer. At the time of filing, she was working for the Petitioner in the position of Senior Director, Technical Design. The Petitioner did not indicate, and the record does not establish, that the Beneficiary has received a major, internationally recognized award pursuant to 8 C.F.R. § 204.5(h)(3). The Petitioner must therefore demonstrate the Beneficiary's eligibility under at least three of the criteria listed at 8 C.F.R. §§ 204.5(h)(3)(i)-(x).

The Director found that the Beneficiary met the leading or critical role criterion under 8 C.F.R. § 204.5(h)(3)(viii) and the high salary criterion under 8 C.F.R. § 204.5(h)(3)(ix), but did not satisfy the regulatory requirements for the awards criterion under 8 C.F.R. § 204.5(h)(3)(i), the original contributions criterion under 8 C.F.R. § 204.5(h)(3)(v), or the authorship criterion under 8 C.F.R. § 204.5(h)(3)(vi). We have reviewed the entire record of proceedings, and it does not support a finding that the Beneficiary meets the plain language requirements of at least three criteria.

[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).

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 Petitioner submitted a letter from [redacted] which stated that the Beneficiary "gained second equal in the [redacted] category of our prestigious [redacted] for 1991."[2] Aside from this letter and a photograph of an unidentified woman on a stage, the Petitioner submitted no other documentation to establish the Beneficiary's receipt of this award.

Further, the Petitioner has not provided the criteria by which awardees of the [redacted] were selected or the selection process itself, or the significance of being "second equal." Although the Petitioner submitted documentation regarding the [redacted] and states that the [redacted] were the precursor to these awards, it does not corroborate this statement or establish that the award the Beneficiary received equates to the later competition. Furthermore, the record does not show that the Beneficiary's award received national or international recognition. Thus, the Petitioner has not established that the Beneficiary 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 letters of support discussing the Beneficiary's contributions to the field of technical design. The Director determined that the evidence did not demonstrate her eligibility for this criterion, noting that her internal work for Primark and the Petitioner was insufficient to demonstrate that she made original contributions of major significance in the field as a whole.

On motion and again on appeal, the Petitioner argues that the Director's decision did not properly consider the documentation it offered in support of the petition. The Petitioner contends that the Director's interpretation regarding the Beneficiary's internal contributions to her employers was too narrow, and asserts that in the field of technical design, "the accomplishments of the individuals are attributed to the company as a whole." The Petitioner relies on numerous letters from top executives and colleagues in the field in support of this assertion, noting that the statements contained in those

[2] The Petitioner also submitted documentation of the Beneficiary's nomination for a [redacted] Noting that a nomination was not equivalent to the actual receipt of such an award, the Director discounted this evidence prior to adjudication. In response to the Director's RFE, the Petitioner apparently concurred with the Director's determination and stated that it would not further discuss this evidence. Therefore, we will not consider the nomination when evaluating this criterion.

letters demonstrates that the Beneficiary has made original contributions of major significance in the field of technical design.

On motion and appeal, the Petitioner relies primarily on a letter from Ph.D., Professor and Program Director of with which provides an "independent evaluation" of the Beneficiary's credentials. who states that she has never met the Beneficiary, provides a general overview of the duties of a technical director within a company. She concludes, however, "that such important and well-known fashion brands would entrust [the Beneficiary] in this integral and critical role in [*sic*] is true testimony to both her reputation and considerable skill." Although she states that the Beneficiary's internal efforts while working for the Petitioner, and other companies such as and were instrumental in improving supply chain performance, brand consistency, apparel sizing strategies, and product quality, there is no indication that those internal efforts were innovative or original to the extent that they had a major influence on the field as whole. We address the Beneficiary's skill and the significance of her work for her employers below, under the more relevant criterion found at 8 C.F.R. § 204.5(h)(3)(viii); here, we focus on her original contributions and how they have impacted her field.

continues by reviewing the Beneficiary's work history, generally noting that she "has made original contributions to companies that produce a broad range of retail products," and that "throughout her career, [the Beneficiary] has truly distinguished herself, making several original contributions to the field, enjoying substantial professional and commercial success, and realizing sustained international acclaim." however, does not specifically identify any of these original contributions, and does not explain how they have impacted the field of technical design as a whole.

Moreover, numerous letters submitted under this criterion, including evaluation, discuss the Beneficiary's introduction of a system called ' to her employers' operations. According to Sourcing and Quality Director for she "is currently establishing & implementing a system called which features the use of 3D avatars as a part of the brands best practice & communication with vendors & other cross functional partners." President and CEO of states that the Beneficiary is "pioneering and leading the implementation and strategy for our latest technological platform, which will enable the team to design in 3-D, increasing production speed and the precision of our product." states that the Beneficiary has "identified and implemented the use of the cutting-edge technology, " noting that she is "spearheading" its critical implementation process for the Petitioner.

According to its website, is "the leading provider of integrated 2D CAD and 3D digital product solutions for the textile industry" and not an original technological innovation of the Beneficiary.[3] The Beneficiary's implementation of a new technology for her current employer,

[3] *See* https:// (last visited Mar. 7, 2018).

which is readily-available and marketed to the fashion and apparel industry,[4] does not constitute an original contribution of major significance as contemplated by this criterion.

Therefore, although the record contains numerous testimonials from her current and past employers, praising her innovative work in expanding their product lines, the record does not establish that the Beneficiary made original contributions of major significance to the field of technical design as a whole. Therefore, the Petitioner has not established that the Beneficiary meets this regulatory criterion.

> *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 provided copies of numerous quality assurance articles and technical design manuals the Beneficiary produced for internal company use while employed by The Director found that these documents did not satisfy the requirements of this criterion because they were not "articles" published in professional or major trade publications or other major media and did not identify the Beneficiary as the author, and we concur with that determination. The Petitioner does not address this criterion or provide any additional evidence to rebut the Director's finding on this issue on motion or appeal. Consequently, the Petitioner has not established that the Beneficiary meets this regulatory 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 that the Beneficiary served as the Head of Quality Assurance and Technical Services for from 2009 to 2016, and also submitted documentation demonstrating that Primark is a multinational clothing retailer with a distinguished reputation. The Director determined that the Petitioner established that the Beneficiary met this criterion, and we agree with that determination.

> *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 provided evidence of her income from in the form of pay stubs from 2015 and 2016. She also provided a copy of her Form W-2, Wage and Tax Statement, for 2016, demonstrating her annual income with the Petitioner, as well as various pay stubs from the Petitioner which corroborate her stated annual salary set forth in her offer of employment. In addition, the Petitioner presented documentation from career and employment websites reflecting that she earned

[4] *See* https:// (last visited Mar. 7, 2018). According to its website, "Over 7,000 companies are using solutions to save time and costs at every step in the textile industry workflow - while keeping up with today's fast changing market. *See* https:// (lasted visited Mar. 7, 2018).

a high salary compared to other professionals in her field. Accordingly, the Director determined that the Petitioner satisfied this criterion, and we concur with the Director's determination.

B. Summary

As explained above, the evidence provided satisfies only two of the regulatory criteria. Had the Petitioner included the requisite material under at least three evidentiary categories, our next step would be a final merits determination that considers all of the submissions in the context of whether the Beneficiary has achieved: (1) a "level of expertise indicating that [she] is one of that small percentage who have risen to the very top of the field of endeavor," and (2) "that the [beneficiary] has sustained national or international acclaim" and that her "achievements have been recognized in the field of expertise." 8 C.F.R. §§ 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20. As the Petitioner has not done so, the proper conclusion is that the Beneficiary has not satisfied the antecedent regulatory requirement of presenting initial evidence set forth at 8 C.F.R. §§ 204.5(h)(3)(i)-(x). *See Kazarian*, 596 F.3d at 1122. Nevertheless, although we need not provide the type of final merits determination referenced in *Kazarian*, a review of the record in the aggregate does not support a finding that the Beneficiary has achieved the level of expertise required for this classification.

C. O-1 Nonimmigrant Status

We note the record of proceedings reflects that the Beneficiary 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 Beneficiary, the prior approval does not preclude USCIS from denying an immigrant visa petition which is adjudicated based on a 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. 1103 (E.D.N.Y. 1989). 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. *Louisiana Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

III. CONCLUSION

The Petitioner has not demonstrated by a preponderance of the evidence that the Beneficiary qualifies for classification as an individual of extraordinary ability under section 203(b)(1)(A) of the Act.

ORDER: The appeal is dismissed.

Cite as *Matter of T-G-, Inc.*, ID# 993215 (AAO Mar. 15, 2018)