U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF A-W-J-I-

DATE: MAY 30, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, an entrepreneur in the field of healthcare delivery, seeks classification as an alien of extraordinary ability. *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 record did not establish, as required, that the Petitioner satisfied the required three of ten evidentiary criteria.

On appeal, the Petitioner asserts that he meets three of the evidentiary 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 a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the recognition of his or her achievements in the field through 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 sufficient qualifying 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).

Satisfaction of at least three criteria, however, does not, in and of itself, establish eligibility for this classification. *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), *aff'd*, 683 F.3d. 1030 (9th Cir. 2012); *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (holding that the "truth is to be determined not by the quantity of evidence alone but by its quality" and that U.S. Citizenship and Immigration Services (USCIS) examines "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"). Accordingly, where a petitioner submits qualifying evidence under at least three criteria, we will determine whether the totality of 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.

II. ANALYSIS

The Petitioner is the co-founder and Chief Executive Officer (CEO) of [redacted] doing business as [redacted] Since the Petitioner has not established that he has received a major, internationally recognized award, he must satisfy at least three of the ten evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Director held that the Petitioner met the criteria for published material about him at 8 C.F.R. § 204.5(h)(3)(iii) and that he played a leading role for [redacted] under 8 C.F.R. § 204.5(h)(3)(viii), but that the evidence did not establish that he met the criteria for original contributions of major significance at 8 C.F.R. § 204.5(h)(3)(v) and a high salary or significantly high remuneration at 8 C.F.R. § 204.5(h)(3)(ix). On appeal, the Petitioner asserts that he meets the original contributions of major significance criteria and has established eligibility for this classification[1]. For the reasons discussed below, the Petitioner has not established that he satisfies at least three of the ten evidentiary criteria.

A. Evidentiary Criteria

> *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).

[1] While the Petitioner previously claimed eligibility under 8 C.F.R. § 204.5(h)(3)(ix), pertaining to a high salary or significantly high remuneration he does not continue to do so on appeal, nor does the record support a finding that he meets that criterion. We will therefore not further address that criterion in this decision.

The Director found that the Petitioner satisfied the requirements of this criterion. The record includes several articles in major media that are about the Petitioner and his co-founding of [redacted] Accordingly, we agree with the Director's determination that the Petitioner meets the plain language of this 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)

In order to meet the requirements of this criterion, the Petitioner must demonstrate that he has already made a contribution, that the contribution is original and in one of the specified areas, and that the contribution has risen to the level of major significance in the field as a whole, rather than being limited to a single organization. Contributions of major significance connote that the Petitioner's work has significantly impacted the field. *See* 8 C.F.R. § 204.5(h)(3)(v); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 134 (D.D.C. 2013).

The Petitioner, in his brief, first asserts that the Director did not give sufficient evidentiary weight to reference letters submitted with the petition, and did not recognize that some of those letters had not been solicited by the Petitioner for purposes of this petition. It is noted that the letter from [redacted] is dated May 11, 2017, the date which the record indicates [redacted] had its official ribbon-cutting ceremony, and that other letters were written in 2015 in support of an application by [redacted] to establish an outpatient partial hospitalization program (PHP). While the Director cited to *Matter of Caron International,* 19 I&N Dec. 791, 795 (Comm. 1988) for the proposition that solicited reference letters are not presumptive evidence of eligibility, each of the letters submitted were analyzed in his decision, and the Director noted that many of them predated the filing.

Upon review, we agree with the Director's determination that these letters do not demonstrate that the Petitioner, through [redacted] has already made a contribution of major significance to the field of healthcare delivery as a whole. Rather, they focus on the impact that [redacted] will have for new mothers in [redacted] President of [redacted] states in her September 5, 2015 letter that "[W]e believe that [redacted] proposed program will be an important step in improving care in [redacted] – New York being a state that lacks any specific type of postpartum treatment center." [redacted] wrote that [redacted] "will be of great benefit to women who are suffering from perinatal mood disorders in my District and in New York State as a whole." In addition, while [redacted] in [redacted] Rhode Island, states that [redacted] "is the first freestanding perinatal [redacted] in the U.S.," her letter and others indicate that in several other states, hospitals are providing the same type of services. The record does not establish the healthcare benefits provided to the residents of [redacted] constitute a contribution of major significance on the field of healthcare.

The Petitioner also asserts on appeal that the Director ignored the evidence of media articles which he submitted with the petition, and points specifically to an article in [redacted] While the

Petitioner asserts that this article shows his influence in the treatment of postpartum depression in the United States, the section of the article that the Petitioner focuses on states only that he wanted to establish a program similar to that in Australia. Some of the articles (and some of the reference letters) note that, as a PHP providing care for mothers of newborns that is independent of a hospital or health-care system, [redacted] is a "first-of-its-kind" business. However, originality or innovation is only one aspect of the requirements under this criterion, and the Petitioner has not demonstrated through the submitted evidence that his contribution has led to a significant impact to the field at this point.

Finally, the Petitioner asserts that the impact of [redacted] business model has gone beyond the local level, as stated by the Director in his decision, and points to a research collaboration entered into with [redacted] However, the agreement indicates that the purpose of the collaboration is to study the effectiveness of [redacted] model for treating postpartum depression and related disorders, and does not demonstrate that it has led to a more wide-spread implementation. 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)

The Director found that the Petitioner also met the requirements of this criterion. The evidence verifies the Petitioner's role as co-founder and CEO of [redacted] as well as [redacted] distinguished reputation. We therefore agree with the Director's finding that the Petitioner meets 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.

ORDER: The appeal is dismissed.

Cite as *Matter of A-W-J-I-*, ID# 1242714 (AAO May 30, 2018)