U.S. Citizenship
and Immigration
Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF T-, INC.

DATE: MAY 31, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a cloud communications company, seeks to classify the Beneficiary as an individual of extraordinary ability in the sciences and 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 Beneficiary had satisfied only one of the ten initial evidentiary criteria, of which he must meet at least three.

On appeal, the Petitioner contends that the Beneficiary meets at least three of the ten criteria and that he "has demonstrated his extraordinary ability in the field of technical product management, through sustained national and international acclaim and evidence that he has risen to the very top of his field internationally."

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,
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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 that a beneficiary has a one-time achievement (that is a major, internationally recognized award). Alternatively, a petitioner must provide documentation for an individual 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 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 beneficiary 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 Beneficiary is senior product manager with the petitioning organization and has previously worked as a software engineer for and Because the Petitioner has not indicated or established that the Beneficiary has received a major, internationally recognized award, it must show that he satisfies 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 Beneficiary had met only the high salary criterion at 8 C.F.R. § 204.5(h)(3)(ix). On appeal, the Petitioner maintains that the Beneficiary also meets the published material, original contributions, and leading or critical role criteria.[1] For the reasons discussed below, the record does not support a finding that the Petitioner satisfies at least three criteria.

[1] These three criteria correspond to the categories of evidence at 8 C.F.R. § 204.5(h)(3)(iii), (v), and (viii), respectively. We note that the Petitioner previously claimed the Beneficiary satisfied the awards criterion under 8 C.F.R. § 204.5(h)(3)(i) based on his awards. The Director determined that these awards were related to projects he performed as a company employee, and that the evidence did not show they were nationally or internationally recognized awards in the field. The Petitioner does not offer additional evidence or arguments for this criterion on appeal, nor does the record support a finding that the Beneficiary meets it.

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).

The record includes various online articles about companies that employed the Beneficiary and their software product launches. None of these articles are about the Beneficiary. For example, a 2016 article in entitled discusses the company's revenue growth, stock valuation, quarterly losses, and service offerings. A brief section of this article notes that the company "introduced a service which provides developers with deeper analytics of their voice application users," but it does not name or identify the Beneficiary.[2] In addition, a 2016 article in entitled new analytics service aims to help optimize web calls," describes the company's service "that promises to help pinpoint the technical issues responsible for drops in audio quality," but this article does mention the Beneficiary.

A large number of the articles provided for this criterion discuss and its new product offerings. For instance, an 2014 article in , entitled is about the company's launch of an Internet streaming and gaming device. Additional articles in the comment on the launch of product and its capabilities.[3] These articles, however, are not about the Beneficiary. Nor do these two articles mention his work to enable external USB mass storage on devices. Furthermore, the record includes articles about processors, but this material does not mention the Beneficiary or his Android software development work. The plain language of the regulatory criterion requires "published material about the alien." Articles that are not about the Beneficiary 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).

On appeal, the Petitioner asserts that the articles it provided "are about [the Beneficiary] and his work," but does not cite to any specific examples. It then contends that, given the nature of his field, software engineers/product managers such as the Beneficiary would not normally be named in press and publications relating to his company. The Petitioner further maintains that the published material for this criterion "alternatively and comparatively demonstrates being about the Beneficiary and his work."

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[2] According to a letter from director of product management for the Petitioner, the Beneficiary was responsible for leading the design, development, and release of

[3] The record includes a letter from an product manager, stating that the Beneficiary's work involved "enabling external USB mass storage on devices."

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 demonstrate that the regulatory criteria are not readily applicable to an individual's occupation and that 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 provided evidentiary support indicating that the criterion at 8 C.F.R. § 204.5(h)(3)(iii) does not readily apply to software engineers or product managers. As such, the Petitioner has not shown that he may rely on comparable evidence for this criterion.

In addition, while the record reflects that the Beneficiary may have been involved in the development process for new software products that attracted media coverage, the Petitioner has not demonstrated these articles about the Beneficiary's employers and their products are comparable to the regulation at 8 C.F.R. § 204.5(h)(3)(iii) which requires evidence of published material about the alien in professional or major trade publications or other major media. The Petitioner has not shown the evidence it claims as comparable to the regulation at 8 C.F.R. § 204.5(h)(3)(iii) is of the same caliber as that required by the regulation. Accordingly, the Beneficiary has not satisfied this criterion by meeting its stated requirements or through the submission of comparable evidence.

> *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 offered various recommendation letters. The Director considered these letters and concluded that, although the references speak highly of the Beneficiary and describe various projects in which he has participated, 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.

On appeal, the Petitioner contends that it "provided probative expert letters confirming that the Beneficiary meets this criterion" and that these letters "clearly spell out the individual contributions [the] Beneficiary has made on numerous projects." [4] With respect to the Beneficiary's software development projects at currently a staff systems engineer with , indicated that the Beneficiary "worked on multiple products including the and and "helped to design and develop power management software that is used in countless Android products worldwide."
Regarding the Beneficiary's projects at senior manager for tablet product software, stated that the Beneficiary was involved in "developing multiple products across different teams. His notable contributions include serving in lead roles for core product development for app, storage, remote app,

[4] We discuss a sampling of these letters, but have reviewed and considered each one.

[5] notes that he was previously employed at and served as "the technical lead" of the Beneficiary's projects.

and numerous features on ,[6] further indicated that the Beneficiary "developed plans for measuring user activity on using web technology, which would help in evaluating the quality of features developed."

With regard to the Beneficiary's work for the Petitioner, it provided a letter from the company's vice president of product management, asserting that the Beneficiary "created and released a wildly successfully product with millions in projected revenues" and that "customers have already adopted" this product. In addition, the record includes letters from three of the Petitioner's customers discussing their utilization of For example, general manager of stated that is a highly innovative product" that allows his company "to identify how, where and when problems arise in communications pipeline with our customers." Similarly, the two additional customer letters from the managing partner of and the founder of explain how has helped their companies improve customer service.

As another form of evidence under this criterion, the Petitioner submits revenue report and multiple invoices reflecting itemized charges for the product. In addition, as previously mentioned, the record contains various articles discussing the Beneficiary's employers and their new product offerings. This documentation includes online articles in publications such as and While these articles mention the introduction of new products with which the Beneficiary was involved, they are not sufficient to demonstrate that his specific development work is considered of major significance in the field.

The regulatory language requires that the Petitioner's original contributions be "of major significance in the field" rather than mainly affecting software development projects for his employers and their product offerings. *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). While the Beneficiary has been involved in the development of multiple products during his employment as a software engineer and senior product manager, the evidence is not sufficient to show that his work has substantially influenced the field as a whole or otherwise rises to the level of an original contribution of major significance in software development or technical product management. For the above reasons, the Petitioner has not established that the Beneficiary 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 Senior Product Manager for the Petitioner, we find that the Petitioner has performed in a critical role for an organization with a distinguished reputation. The record includes letters from company

[6] The regulations include a separate criterion for performing in a leading or critical role at 8 C.F.R. § 204.5(h)(3)(viii), and the Beneficiary's role for his employers will be further addressed under that criterion.

executives discussing the Petitioner's specific responsibilities and stating that he led the development of one of the Petitioner's "most important product releases" and a source of "significant additional revenue." In addition, the Petitioner offers various articles that suffice to demonstrate that the company has garnered a distinguished reputation. Accordingly, the Petitioner has established that the Beneficiary 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).

With the petition, the Petitioner provided its October 2015 job offer to the Beneficiary stating that he would receive a "gross base annual salary" of $145,000. In addition, it submitted a January 2017 letter listing an "updated annual compensation figure of $150,991." The Petitioner also offered salary information from the *OOH* stating that "[t]he median annual wage for computer and information systems managers was $135,800 in May 2016" and that "the highest 10 percent earned more than $208,000." Furthermore, in the "Information" industry, the median annual wage for computer and information systems managers was $150,190.

In response to the Director's request for evidence (RFE), the Petitioner presented the Beneficiary's 2015 and 2016 Forms W-2, Wage and Tax Statements, reflecting earnings of $186,318.42[7] and $134,070.41, respectively. The RFE response also included a July 2017 letter from the Petitioner and July and August 2017 pay statements indicating that the Beneficiary earns a "[b]ase salary of $157,031.68." We note that his earnings and other remuneration received after June 8, 2017 post-date the filing of the petition. *See* 8 C.F.R. § 103.2(b)(1), (12). While the aforementioned information and evidence shows that the Beneficiary's 2015 and 2017 earnings were above the median, his salary remains well below the top decile in his field, and we do not find the record sufficient to demonstrate a "high salary" relative to others in the field.

With respect to the Beneficiary's other remuneration, the July 2017 letter from the Petitioner states that he received "[a]nnual vesting of stock options" of $86,609.60, an Employee Stock Purchase Plan 15% discount of $4,156.72 per year, and employee benefits (such as 401(k), medical, and dental) of $34,500.00 annually. The Petitioner, however, does not offer comparative evidence demonstrating that the Beneficiary's other remuneration is significantly high relative to others in the field. For the above reasons, the Petitioner has not established that the Beneficiary meets this criterion and the Director's finding on this issue is withdrawn.

III. CONCLUSION

The Beneficiary is not eligible because the Petitioner 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

[7] This 2015 W-2 amount represented wages from both the Petitioner ($15,026.62) and ($171,291.80).

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. Nevertheless, we advise that we have reviewed the record in the aggregate, concluding that it does not support a finding that the Beneficiary has established the level of expertise required for the classification sought.

ORDER: The appeal is dismissed.

Cite as *Matter of T-, Inc.*, ID# 1092764 (AAO May 31, 2018)