U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF Q-T-, INC.

DATE: NOV. 27, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a wireless communications company, seeks to classify the Beneficiary as an individual 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 Acting Director of the Nebraska Service Center denied the Form I-140, Immigrant Petition for Alien Worker, concluding that the Beneficiary 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 the Beneficiary meets at least three of the 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).

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 Beneficiary is a staff systems test engineer who is currently employed by the Petitioner in [redacted] California. As the Petitioner has not established that the Beneficiary 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).

A. Evidentiary Criteria

The Director found that the Beneficiary met the following two criteria: original contributions under 8 C.F.R. § 204.5(h)(3)(v) and high salary under 8 C.F.R. § 204.5(h)(3)(ix). Although the record does not support the Director's determination regarding the original contributions criterion[1], we find the Petitioner has fulfilled three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3).

Specifically, the Petitioner's documentary evidence indicates that the Beneficiary commands high earnings in relation to others in his field satisfying the high salary criterion. In addition, the Petitioner presented evidence reflecting that the Beneficiary served on patent review boards within the company meeting the judging criterion under 8 C.F.R. § 204.5(h)(3)(iv). Moreover, the record

[1] The Director's decision does not identify which contributions she considered original, nor does she explain why she found them to be of major significance.

contains evidence showing the Beneficiary's critical performance in his position for the Petitioner fulfilling the leading or critical role criterion under 8 C.F.R. § 204.5(h)(3)(viii). Accordingly, the Petitioner has established the Beneficiary's eligibility for at least three regulatory criteria, and we will evaluate the totality of the evidence in the context of the final merits determination below.

B. Final Merits Determination

As the Petitioner has submitted the requisite initial evidence, we will evaluate whether it has demonstrated, by a preponderance of the evidence, the Beneficiary's sustained national or international acclaim and that he is one of the small percentage at the very top of the field of endeavor, and that his achievements have been recognized in the field through extensive documentation. In a final merits determination, we analyze a beneficiary's accomplishments and weigh the totality of the evidence to determine if his successes are sufficient to demonstrate that he has extraordinary ability in the field of endeavor. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20. In this matter, we determine that the Petitioner has not shown the Beneficiary's eligibility.

According to the Beneficiary's curriculum vitae, he obtained his bachelor of science degree in computer science and engineering from [redacted] in India. In addition, he received a master of science degree in computer science and engineering from the [redacted] The Beneficiary has been employed by the Petitioner since 2007; first as a systems software design architect staff software systems engineer and then as a staff systems test engineer. As mentioned above, the Beneficiary has served on the Petitioner's patent review board, has received a high salary from the company, and has performed in a critical role. While these achievements demonstrate success within the petitioning company, the record does not sufficiently document that they have been extensively recognized by the broader field, or that the Beneficiary has otherwise garnered sustained national or international acclaim. As discussed below, the submitted documentation does not demonstrate that the Beneficiary's achievements are reflective of a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990).

Regarding the Beneficiary's service as a judge, an evaluation of the significance of his experience is appropriate to determine if such evidence is indicative of the extraordinary ability required for this highly restrictive classification. *See Kazarian*, 596 F. 3d at 1121-22. As indicated above, the record reflects that the Beneficiary served on the Petitioner's patent review board. For instance, [redacted] senior director of technology, stated that he "witnessed [the Beneficiary] demonstrate the ability to judge the intellectual property draft proposals from inventors across the company." Moreover, [redacted] patent counsel, explained that "we require anyone invited to be part of our [panel review board] to provide us with the highest levels of adjudication of new ideas presented to the Board based on the dollar amount we will spend for that patent."

While the Petitioner's reference letters confirm the Beneficiary's service on the internal review panel, they do not provide specific, detailed information, such as the extent of his experience or the

number of patents he reviewed. Overall, the Petitioner did not establish that the Beneficiary's judging experience is indicative of the required sustained national or international acclaim. *See* section 203(b)(1)(A)(i) of the Act. The Petitioner, for example, did not show that the Beneficiary's expertise and patent review capabilities are recognized by the overall field rather than limited to acknowledgment within the company. Without evidence that sets him apart from others in his field, the record does not show that the Beneficiary's judging places him in that small percentage at the very top of his field. *See* 8 C.F.R. § 204.5(h)(2).

As indicated above, the Beneficiary has performed in a critical role for the Petitioner, contributing to its successes. For instance, [redacted] vice president of engineering, stated that the Beneficiary's "work is instrumental in the annual launch of hundreds of millions of devices globally" and "this is worth several billion dollars in revenue." However, the Petitioner did not demonstrate that the Beneficiary's employment in this role is reflective of, or has resulted in, widespread acclaim from his field or that he is considered to be at the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2). The record does not demonstrate that the Petitioner has held any other leading or critical roles for organizations or establishments with distinguished reputations, nor does it show that his role for the Petitioner is representative of sustained national or international acclaim or a "career of acclaimed work in the field." *See* section 203(b)(1)(A) of the Act; H.R. Rep. No. at 59.

In addition, although the Petitioner pays the Beneficiary a high salary in relation to others in the field, it did not show that his earnings, together with the record as a whole, demonstrate national or international acclaim. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2). The Petitioner seeks a highly restrictive visa classification for the Beneficiary, intended for individuals already at the top of their respective fields. Further, 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). While the Petitioner need not establish that there is no one more accomplished to qualify for the classification sought, we find the record insufficient to demonstrate that the Beneficiary has sustained national or international acclaim and is among the small percentage at the very top of his field.

Beyond the three criteria that the Beneficiary satisfied, we consider additional documentation in the record in order to determine whether the totality of the evidence demonstrates eligibility. Here, for the reasons discussed below, we find that the evidence neither satisfies the requirements of any further evidentiary criteria nor contributes to an overall finding that the Beneficiary has sustained national or international acclaim and is among the small percentage at the top of his field.

As it relates to published material, the record contains screenshots relating to press coverage of the Petitioner and announcements of new products. For example, the Petitioner submitted screenshots from [redacted] regarding "the speed and power of [redacted] network with flagship smartphones powered by [redacted] modems." This screenshot, as well as the other screenshots from various websites, never mentions the Beneficiary. Here, the Petitioner has not shown that the Beneficiary has received any press or media coverage

that would contribute to a finding that he has sustained national or international acclaim necessary for this highly restrictive classification or that is indicative of a level of success consistent with being among "that 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).

In regards to original contributions of major significance, the Petitioner indicated that the Beneficiary's work resulted in 82 granted patents for the company with over 230 patents pending approval. Patents may recognize the originality of inventions or ideas but do not necessarily establish them as contributions of major significance. While the patents show the importance of the Beneficiary's role to the Petitioner, the record does not demonstrate the substantial impact or influence to the overall field. Moreover, the Petitioner provided screenshots from reflecting that the Beneficiary's patents were published from 2013 to 2017. The Petitioner, however, has not established that this publication record is consistent with the Beneficiary being among the small percentage at the top of the field or having a "career of acclaimed work." H.R. Rep. No. at 59. In addition, the Petitioner has not demonstrated that the Beneficiary's patents reflect the required *sustained* national or international acclaim. *See* section 203(b)(1)(A) of the Act. The commentary for the proposed regulations implementing section 203(b)(1)(A)(i) of the Act provides that the "intent of Congress that a very high standard be set for aliens of extraordinary ability is reflected in this regulation requiring the petitioner to present more extensive documentation than that required" for lesser classifications. 56 Fed. Reg. 30703, 30704 (July 5, 1991).

Moreover, as creating novel ideas and inventions is part of the Beneficiary's occupation, the citation history or other evidence of the influence of his work is an important indicator to determine the impact and recognition that his work has had on the field and whether such influence has been sustained. For example, numerous, abundant independent citations of the Beneficiary's work may provide solid evidence that his work has been recognized and that others have been influenced by his work. Such an analysis at the final merits determination stage is appropriate pursuant to *Kazarian*, 596 F. 3d at 1122. On the other hand, few or no citations to the Beneficiary's work may indicate that his work has gone largely unnoticed by his field. Here, the Petitioner argued that the Beneficiary's patents were cumulatively cited over 373 times. Further, the screenshots from reflect that the Beneficiary's most highly cited patent ("System and Method for Configuring an Interior of a Vehicle Based on Preferences Provided with Multiple Mobile Computing Devices Within the Vehicle") had 33 citations, while 181 of his patents had no citations. Although the citation to the Beneficiary's patents shows some interest from others in the field, the Petitioner did not demonstrate that such citations, considered both individually and collectively, establish a level of interest in his field commensurate with sustained national or international acclaim at the very top of his field. *See* section 203(b)(1)(A)(i) of the Act and 8 C.F.R. § 204.5(h)(3).

Further, while citations are not the only way to gauge the importance or recognition of an individual's work, the record does not otherwise demonstrate that the Beneficiary's work has been considered of major significance and garnered wide acclaim in the field. The Petitioner presented

recommendation letters on behalf of the Beneficiary that praised his work but did not establish the significance of his contributions to the overall field.[2] For instance, although [redacted] vice president of [redacted] claimed that "it is clearly evident that [the Beneficiary] holds international acclaim for his novel and globally unique contributions to several contemporary technologies of today and the near future," he did not provide specific, detailed information supporting his opinion. While [redacted] offered examples of the Beneficiary's patents he did not show how they are considered by the greater field as majorly significant or that he has garnered attention at a level showing sustained national or international acclaim or placing him among that small percentage at the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2).

III. CONCLUSION

For the reasons discussed above, the Petitioner has not established the Beneficiary's eligibility as an individual of extraordinary ability.

ORDER: The appeal is dismissed.

Cite as *Matter of Q-T-, Inc.*, ID# 1757909 (AAO Nov. 27, 2018)

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