U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

MATTER OF Z-, INC.

DATE: SEPT. 24, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a home and real estate marketplace, seeks to classify the Beneficiary, its senior manager in data science, 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 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 a brief, arguing that the Beneficiary meets at least three of the ten 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). 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 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 Petitioner employs the Beneficiary as a senior manager in data science, whose work focuses on computationally driven analytics. Because the Petitioner has not indicated or 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). In denying the petition, the Director found that the Beneficiary met only two of the initial evidentiary criteria, original contributions under 8 C.F.R. § 204.5(h)(3)(v) and scholarly articles under 8 C.F.R. § 204.5(h)(3)(vi).

On appeal, the Petitioner maintains that the Beneficiary meets two additional criteria, discussed below. We have reviewed all of the evidence in the record and conclude that it does not support a finding that the Beneficiary satisfies the requirements of at least three criteria.

*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).

Although the Director concluded that the Beneficiary fulfilled this criterion, the record does not reflect that he has made original contributions of major significance in his field.[1] In order to satisfy the regulation at 8 C.F.R. § 204.5(h)(3)(v), a petitioner must establish that not only has a beneficiary made original contributions but that they have been of major significance in the field. For example, a petitioner may show that a beneficiary's contributions have been widely implemented throughout the field, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance in the field. The Petitioner claimed the Beneficiary's eligibility for this criterion based on his original research in drug discovery financing, as demonstrated through media reports, presentations and publications, and recommendation letters.

As it relates to media reports, the Petitioner provided screenshots from three websites reporting on two of the Beneficiary's published papers regarding the application of "megafund" financing methods to certain drug discovery research. Specifically, the screenshots from mitsloan.mit.edu relate to his *Science Translational Medicine* article, and the screenshots from scientificamerican.com and orpha.net relate to his *Drug Discovery Today* article. The Petitioner, however, did not demonstrate that the reporting of the Beneficiary's two papers on three websites is consistent with the field recognizing his research as having had major significance. Moreover, the screenshots focus on the prospective potential impact of the petitioner's research, rather than how his work already qualifies as a contribution of major significance in the field. For instance, the mitsloan.mit.edu screenshots state that the *Science Translational Medicine* article "demonstrates the *potential* of a new financing technique," "*potentially* unlocks new levels of funding," and "megafunds *may* be particularly well-suited to fund orphan drug development" (emphasis added). Similarly, the orphan.net screenshots indicate that the *Drug Discovery Today* article indicates that megafund portfolios "*could* attract capital into orphan drug portfolios," "*could* deliver *potentially*, albeit uncertain, high returns on investment," and "are only indicative of megafund *potential*" (emphasis added).

In addition, the record reflects that the Petitioner provided evidence showing that the Beneficiary presented at five conferences and authored nine papers. Participation in a conference demonstrates that his findings were shared with others and may be acknowledged as original based on their selection for presentation. However, the Petitioner did not establish that the selection of Beneficiary's papers for presentation at conferences and requests for him to speak, in-and-of-themselves show the major significance of his contributions. Publications and presentations are not sufficient under 8 C.F.R. § 204.5(h)(3)(v) absent evidence that they were of "major significance." *See Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009), *aff'd in part*, 596 F.3d 1115. Here, the

[1] We note that the Director's decision does not identify the Beneficiary's original contributions or the evidence on which he based his finding for this criterion.

Petitioner did not demonstrate that his presenting and speaking engagements were majorly significant in the field.

Further, regarding the Beneficiary's published material, the Petitioner submitted evidence reflecting that his top three articles were cited 29, 26, and 19 times, respectively. The Petitioner, however, did not show that such citations are indicative that the Beneficiary's work has significantly impacted or influenced the field. For example, the Petitioner did not present evidence indicating that the Beneficiary's work has been singled out as being particularly important, highly impactful, or that his research on a specific topic has been cited extensively throughout the field. Moreover, the Petitioner has not demonstrated that his other unpublished works, such as his dissertation, rise to a level consistent with original contributions of major significance in the field.

The record also shows that the Beneficiary is credited on a patent as one of the inventors for [redacted] A patent may recognize the originality of an invention or idea but does not necessarily establish that it is a contribution of major significance in the field. The Petitioner provided only one recommendation letter that mentioned the Beneficiary's patent. Specifically, [redacted] associate professor at the [redacted] confirmed that the Beneficiary co-invented the patent and described the method. [redacted] however, did not explain or demonstrate how the patent has impacted or influenced the field or is otherwise considered an original contribution of major significance by the field.

Finally, the Petitioner provided recommendation letters that discussed the Beneficiary's work without demonstrating the impact or influence of his work in the field. Similar to the websites mentioned above, the letters recounted the Beneficiary's findings, indicated their publications in journals, and discussed the potential impact without showing how his research is already considered to be of major significance in the field.[2] For example, [redacted] founder and managing director for [redacted] identified three papers authored by the Beneficiary on the topic of drug development financing, and claimed that his "work has broken new ground and *will* help to establish new types of financings that *can* impact and improve drug development" (emphasis added). Likewise, [redacted] professor at [redacted] discussed their collaborations and asserted that "[t]his work provides a roadmap and useful tools for the real-life implementation of such models, which *will* help get new and better drugs to patients sooner" (emphasis added). Although the authors, such as [redacted] (chief business officer at the [redacted] and [redacted] (chief scientific officer at [redacted]) opined that they "believe these significant contributions clearly establish that [the Beneficiary] meets the requirements to be designated as a person of extraordinary ability in the computationally driven analytics field," they did not explain or demonstrate how the Beneficiary's contributions have been majorly significant to the overall field beyond summarizing his findings.[3] Repeating the language of

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

[3] *See* USCIS Policy Memorandum PM 602-0005.1, *Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator's Field Manual (AFM) Chapter 22.2, AFM Update AD11-14* 8-9 (Dec. 22, 2010),

the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.).

The letters considered above primarily contain attestations of the Beneficiary's status in the field without providing specific examples of how his contributions rise to a level consistent with major significance. Letters that repeat the regulatory language but do not explain how an individual's contributions have already influenced the field are insufficient to establish original contributions of major significance in the field. *See Kazarian*, 596 F.3d at 1122 (finding USCIS' conclusion that "letters from physics professors attesting to [the petitioner's] contributions in the field" were insufficient was "consistent with the relevant regulatory language"). Moreover, USCIS need not accept primarily conclusory statements. *1756, Inc. v. The U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.C. Dist. 1990). Again, the documentation discusses the possibility of future impact or influence without demonstrating that the Beneficiary's work is already a contribution of major significance to the overall field.

Because the Petitioner did not establish that the Beneficiary has made original contributions of major significance in the field consistent with the regulation at 8 C.F.R. § 204.5(h)(3)(v), we withdraw the decision of the Director for this 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 Director determined that the Beneficiary satisfied this criterion. As discussed above, the Beneficiary authored scholarly articles in professional journals. Accordingly, the Petitioner 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).

The Petitioner argues that the Beneficiary performed in a critical role for its organization.[4] As it relates to a critical role, the evidence must establish that a petitioner has contributed in a way that is of significant importance to the outcome of the organization or establishment's activities.[5] It is not the title of a petitioner's role, but rather the performance in the role that determines whether the role is or was critical.[6]

---

http://www.uscis.gov/laws/policy-memoranda; *see also 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).

[4] The Petitioner does not contend that the Beneficiary performed in a leading role for its organization or that he performed in a leading or critical role for other organizations or establishments that have distinguished reputations.

[5] *See* USCIS Policy Memorandum PM-602-0005.1, *supra*, at 10.

[6] *Id.*

The record contains two letters from employees of the Petitioner who discussed the Beneficiary's works and projects. For instance, [redacted] chief analytics officer, stated that the Beneficiary made "significant contributions" to the Petitioner's mission and indicated that he "contributed several research and works around [redacted] an automated valuation model." Although [redacted] attested that the Beneficiary made "critical contributions," he did not provide specific information establishing how those contributions were of significant importance to the outcome of the organization's activities.[7] Similarly, [redacted] vice president of data science and engineering, claimed that the Beneficiary "has made critical contributions to the company" and listed six of his projects. [redacted] however, did not sufficiently explain how the Beneficiary's projects and research were important to the Petitioner's success. Moreover, using language from the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108, *aff'd*, 905 F. 2d at 41; *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5. Here, the submitted letters do not contain detailed and probative information that specifically address how the Beneficiary performed in a critical role.[8]

Accordingly, the Petitioner did not establish that the Beneficiary satisfies this criterion.

> *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 record reflects that the Petitioner initially hired the Beneficiary in 2015 as a senior data scientist earning a base salary $120,000 per year, and his salary later increased to $150,000. In 2017, the Petitioner promoted the Beneficiary to a senior manager making a base salary of $170,100 per year. In order to meet this criterion, a petitioner must demonstrate that a beneficiary's salary or remuneration is high relative to the compensation paid to others working in the field.[9]

Regarding the Beneficiary's position as a senior data scientist, the Petitioner provided evidence from flcdatacenter.com showing that Level 4 Wages for "computer and information research scientists" in the [redacted] Washington metropolitan area earn $159,266.[10] Moreover, the Petitioner offered screenshots from glassdoor.com displaying that the average "senior data scientist" in [redacted] Washington earns $157,845 per year. In addition, the Petitioner submitted screenshots from bls.gov reflecting the national median pay for "computer and information research scientists" is $111,840, and screenshots from 1.salary.com indicating the average data scientist in the [redacted] Washington area is $134,809. Thus, two screenshots show that the Beneficiary's salary as a "senior data scientist" was less than the median wage for others in his field in the [redacted] Washington area. With regard to the evidence of the average wages of "computer and information research scientists" and

---

[7] *See* USCIS Policy Memorandum PM-602-0005.1, *supra*, at 10.
[8] *Id.*
[9] *See* USCIS Policy Memorandum PM-602-0005.1, *supra*, at 11.
[10] The Level 4 wage relates to fully competent employees. *See* Prevailing Wage Determination Policy Guidance, http://flcdatacenter.com/download/NPWHC_Guidance_Revised_11 _2009.pdf at page 7, accessed on July 13, 2018, and incorporated into record of proceedings.

data scientists, the Petitioner has not shown that these data pools represent a relevant basis of comparison for the Beneficiary's salary as a senior data scientist. *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 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's evidence does not demonstrate that the Beneficiary earned a salary placing him at the high end of the spectrum for wages of other senior data scientists.

As it relates to the Beneficiary's position as a senior manager in data science, the Petitioner provided screenshots from comparably.com showing that "senior managers" in data science in Washington earned an average of $123,000 per year, and the national average is $191,666 per year. Further, the Petitioner submitted screenshots from flcdatacenter.com showing that Level 4 Wages for "computer and information systems managers" in the Washington metropolitan area earn $181,266. This evidence reflects that the Beneficiary commands a salary that is lower than the national average and is also less than fully competent employees in the Washington area. Accordingly, we find the record insufficient to demonstrate that the Beneficiary commanded a high salary in relation to other senior managers in data science.

The Petitioner also argues that the Beneficiary earned $206,809 in 2016 and $209,121 as of November 2017. A review of the paystubs submitted by the Petitioner reflects that the Beneficiary receives additional incentives as part from his salary such as "Restricted Stock," "Referral Bonus," and "HackWeek Bonus GU." These extra incentives are not part of the Beneficiary's salary. While the regulatory language at 8 C.F.R. § 204.5(h)(3)(ix) also allows for evidence of "other significantly high remuneration for services in relation to others in the field," the Petitioner did not provide evidence showing that these bonuses and other incentives are significantly high compared to other senior data scientists or senior managers.

For these reasons, the Petitioner did not show that the Beneficiary fulfills this criterion.

## III. CONCLUSION

The Petitioner has not submitted the required initial evidence of either a one-time achievement or documents that meet at least three of the ten criteria. As a result, we need not provide the type of final merits determination referenced in *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 Beneficiary's acclaim and recognition required for the classification sought.

The Petitioner seeks a highly restrictive visa classification for the Beneficiary, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward the top. 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. at 954. Here,

the Petitioner has not shown that recognition of the Beneficiary's work is indicative of the required sustained national or international acclaim or that it is consistent with a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate that the Beneficiary has garnered national or international acclaim in the field, and he is one of the 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).

For the foregoing reasons, the Petitioner has not shown that the Beneficiary qualifies for classification as an individual of extraordinary ability.

**ORDER:** The appeal is dismissed.

Cite as *Matter of Z-, Inc.*, ID# 1561731 (AAO Sept. 24, 2018)