U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF A-P-

DATE: SEPT. 28, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a technology entrepreneur, seeks classification as an individual 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 Form I-140, Immigrant Petition for Alien Worker, concluding that the Petitioner had shown that he met only two of the ten initial evidentiary criteria, of which he must meet at least three.

On appeal, the Petitioner submits additional evidence and contends that he meets three 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). Alternatively, he or she must provide documentation 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).

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 is a technology entrepreneur. As the Petitioner has not established that he has received a major, internationally recognized award, he must satisfy at least three of the ten criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Director held that the Petitioner established that he met the criteria for original contributions of major significance under 8 C.F.R. § 204.5(h)(3)(v) and leading or critical role under 8 C.F.R. § 204.5(h)(3)(viii) but not for published materials under 8 C.F.R. § 204.5(h)(3)(iii). On appeal, the Petitioner asserts that he also meets this criterion for published material as well as that of high salary under 8 C.F.R. § 204.5(h)(3)(ix). For the reasons discussed below, we conclude that the record does not support a finding that the Petitioner satisfies at least three 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 contains articles from Yahoo Finance, TechCrunch.com, Tech Times and others that name the Petitioner as a co-founder of [redacted] The Director held that these articles are not about the Petitioner and therefore do not meet the requirements of the regulatory criterion. On appeal, the Petitioner states that these articles constitute published material about him because he is named in the articles and credited as the founder of [redacted] while also being quoted in one of them. The Petitioner also states that the Director placed greater emphasis on whether the published material is about him rather than his work in the field as stated in 8 C.F.R. § 204.5(h)(3)(iii). To support this assertion, the Petitioner cites *Muni v. INS*, 891 F.Supp. 440, 445 (N.D. Ill. 1995).

First, we note that the regulation at 8 C.F.R. § 204.5(h)(3)(iii) states that the published material must be both about the individual and that it must relate to the individual's work in the field. Second, the court's decision in *Muni* held that the articles from various newspapers and hockey magazines constituted published material because they were about the petitioner and "discuss[ed] [his] hitting ability and his record as a defenseman." This differs from the present case, where the articles noted above are not about the Petitioner and do not discuss his individual abilities. Although they identify him, they are about the company he co-founded. The articles do not discuss the Petitioner other than to identify him as the co-founder of , and the quotation in the Yahoo Finance article, comes from a joint statement from all of the co-founders providing a brief overview of what does. Because these articles do not focus directly on the Petitioner and do not contain information about him, other than identifying him as the co-founder of they do not constitute published material about him.

The Director further noted that the only article submitted about the Petitioner and his work in the field was published by Le Temps, a Swiss multi-media news source[1] and then concluded that the record does not contain sufficient supporting documentation to demonstrate that the site is a is a qualifying publication under the regulation. On appeal, the Petitioner has submitted evidence of the circulation statistics for the website. However, we need not address the qualifications of the publication because after further review we find that the original article is in a foreign language and that the record contains an uncertified translation and lacks a copy of the original source.[2] Any document in a foreign language must be accompanied by a full English language translation. 8 C.F.R. § 103.2(b)(3). The translator must certify that the English language translation is complete and accurate, and that the translator is competent to translate from the foreign language into English. *Id.* Because the Petitioner did not submit a properly certified English language translation of this document, we cannot meaningfully determine whether the translated material is accurate and thus supports the Petitioner's claims. Therefore, the evidence in the record does not establish that the Petitioner meets 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).

The Director held that the Petitioner submitted sufficient evidence to meet this criterion without explaining her reasoning. On review, while we find that the record indicates that the Petitioner has made original contributions, the record does not establish that these have been of major significance in the field.

the Director of Engineering at states that soon after hiring the Petitioner, he was tasked with a project to improve the company's user engagement strategy. He states, "Before [the Petitioner] launched the communication s project, it would take months of engineering effort to

[1] www.letemps.ch

[2] https://www.letemps.ch/

launch a basic email campaign targeting a subset of our users . . . . However, with the system built by [the Petitioner], we can now launch more advanced campaigns within hours without needing engineering intervention most of the time." He further adds that the Petitioner's contributions "have had an enormous positive impact on , the leading file sharing and collaboration platform in the world," and that "his contribution to cannot be overstated."

Letters that repeat the regulatory language but do not explain how an individual's contributions have 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 petitioners] contributions in the field" were insufficient was "consistent with the relevant regulatory language"). Here, this letter from states that the Petitioner's contributions positively impacted , but the record does not demonstrate how these contributions have impacted the field to reach the level of major significance.

In a letter from the Chief Executive Officer at , he states that the Petitioner "identified an opportunity in social networking and tirelessly worked outside of his regular duties on weekends to single-handedly build and launch the largest social network to originate in India." the "SVP and Chief Product Officer of states that the Petitioner is "one of the most sought-after experts in the field of consumer social products," indicating that is "a social network with 70 [million] users." While we acknowledge the success he has had with launching this product, without evidence in the record to corroborate what is and how it impacts the field, the Petitioner has not established that this amounts to original contributions of major significance.

also references the Petitioner's experience building mobile app, but the evidence in the record does not contain sufficient evidence about this app to demonstrate how it represents a contribution of major significance in the field.

states that the Petitioner also created , "a technology which revolutionized the way enterprises and consumers collaborate," adding that this product "was so disruptive that actually acquired it before its public launch to augment their product offerings." We note that this represents an original contribution that has acquired, but it is unclear whether this is still being improved by the company internally or whether it has been introduced as a product in the industry. Accordingly, the record does not demonstrate how it constitutes a contribution of major significance.

The record reflects that the Petitioner has been invited to advise the companies in and in but he has not shown what original contributions he provided these companies or how they have impacted the field. Therefore, the evidence in the record does not establish that the Petitioner 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).

A leading role should be apparent by its position in the overall organizational hierarchy and through the role's matching duties. A critical role should be apparent from the Petitioner's impact on the organization or the establishment's activities.

The Director held that the evidence establishes that the Petitioner meets this criterion by having performed in a leading or critical role. We agree. At [redacted] the record shows the Petitioner's leading role in having led a New Product Innovation Group of 25 employees and in currently serving as the Director of Product Innovation and New Businesses. While employed at [redacted] the record demonstrates his critical role in having developed a product and systems architecture at a crucial time for the company which greatly decreased the length of time it would take to launch a new user engagement strategy, significantly improving user engagement and increasing the company's growth and revenue. Accordingly, the record reflects that the Petitioner meets 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 Petitioner asserts on appeal that he meets this criterion, providing evidence of his salary as Director of Product and Development at [redacted] and documentation from the U.S. Department of Labor, PayScale, and Glassdoor that demonstrates his annual salary is high in relation to others in the field. Therefore, the Petitioner has established that he meets this criterion.

III. CONCLUSION

The Petitioner is not eligible because he 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 listed at 8 C.F.R. § 204.5(h)(3)(i)-(x), or comparable evidence establishing his eligibility. Thus, we do not need to 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 acclaim and recognition required for the classification sought.

ORDER: The appeal is dismissed.

Cite as *Matter of A-P-*, ID# 1641301 (AAO Sept. 28, 2018)