U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 5827043

Date: DEC. 12, 2019

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Extraordinary Ability)

The Petitioner, a business analyst, 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 Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner had satisfied at least three of ten initial evidentiary criteria, as required. The matter is now before us on appeal.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 203(b)(1)(A) of the Act makes immigrant visas available to aliens 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).

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 Director of Business Analysis for [redacted] a subsidiary of [redacted] Financial Corporation.

A. Evidentiary Criteria

Because the Petitioner has not indicated or established that he 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). The Director found that the Petitioner met two of the evidentiary criteria, relating to performing in a leading or critical role for distinguished organizations or establishments under 8 C.F.R. § 204.5(h)(3)(viii), and commanding a high salary or other significantly high remuneration for services under 8 C.F.R. § 204.5(h)(3)(ix). We will not disturb these findings. On appeal, the Petitioner asserts that he also meets the evidentiary criteria relating to judging the work of others under 8 C.F.R. § 204.5(h)(3)(iv) and original contributions of major significance under 8 C.F.R. § 204.5(h)(3)(v). After reviewing all of the evidence in the record, we find that the Petitioner has satisfied the criterion relating to judging, but not relating to contributions, as discussed below.

> *Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.* 8 C.F.R. § 204.5(h)(3)(iv)

The Petitioner stated that he "judged the 2018 [redacted] Business Awards, one of the [redacted] Awards presented each year . . . [and] also judged the 2018 [redacted] Awards." The Director acknowledged that the Petitioner was named as a judge, but found that the Petitioner had not submitted documentary evidence to establish that he actually participated as a judge for those awards.

We disagree with the Director's finding. The initial submission included a certificate presented to the Petitioner "for judging the 2018 [redacted] Business Awards." The wording, on its face, implies that the judging had already taken place, and the record does not indicate otherwise. Scoring took place online over a period of weeks or months, with no indication that judges were presented with records of individual votes cast. The *significance* of this judging activity is a matter for discussion in the final merits determination, below.

We do agree with the Director that the Petitioner has not shown that he actually participated as a judge for the [redacted] Awards. The acceptance message from that entity reads, in part: "After you have completed your scoring, the last page will have the details on how to request a certificate of appreciation." The record does not show that the Petitioner ever received such a certificate, and there is no alternative evidence that the Petitioner "completed [his] scoring."

> *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 satisfy this criterion, petitioners must establish that not only have they made original contributions, but also that those contributions have been of major significance in the field. For example, a petitioner may show that the 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.

The Petitioner stated that he "made significant contributions while developing [redacted] Compliance Program in response to the [redacted] regulations of the Dodd-Frank Act; his contributions have also had major impact as they influenced the development of the [redacted] program at over 50% of the market." An associate general counsel at [redacted] elaborated:

> While designing the program that would help [redacted] meet the spirit and intent of the regulation, [the Petitioner] created a tool that combined a number of top-down and bottom-up assessment techniques to determine [redacted] applicability for all financial instruments within the bank. . . . This tool enabled [redacted] to quickly determine how the regulation applied to its activities and build the necessary controls for compliance over a period of only several months. In comparison, other regional banks took over a year to complete the same activity. This also allowed [redacted] to lead the way for other regional banks by sharing information on best practices and set the bar for industry practices. . . . [T]he same principles could be applied to other programs within [redacted]
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> [The Petitioner] also developed the process for the CEO to provide his attestation annually with very few moving parts in a cascaded accountability model that . . . was different and more efficient than other traditional CEO attestation processes.

The Petitioner stated: "The regional banks that participated in [redacted]'s Regional Banking Group meeting to discuss . . . constitute over half of the banks in the KBW Bank Index," which "track[s] the performance of the leading banks and thrifts that are publicly traded in the U.S." The Petitioner named

the banks participating in the Regional Banking Group, and asserted, through counsel, that his work has had an "impact . . . on over 50% of the market."

The Petitioner did not submit evidence from any of the other named banks to show that those banks have adopted the compliance tools that the Petitioner developed; their involvement in conference calls is not evidence of that adoption. The Director requested evidence of widespread implementation of the Petitioner's methods, to show that the Petitioner's contributions were "of major significance to the field instead of just the petitioner's organization."

In response, counsel for the Petitioner stated that, owing to privacy concerns, "bankers tend to be the most taciturn amongst all professionals" and therefore the Petitioner "is unable to provide any additional documented evidence from external parties." Assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988) (citing *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980)).

The Petitioner, through counsel, asked the Director to consider previously submitted letters "under the secondary evidence rule." This refers to 8 C.F.R. § 103.2(b)(1)(ii), which reads:

> The non-existence or other unavailability of required evidence creates a presumption of ineligibility. If a required document, such as a birth or marriage certificate, does not exist or cannot be obtained, an applicant or petitioner must demonstrate this and submit secondary evidence, such as church or school records, pertinent to the facts at issue. If secondary evidence also does not exist or cannot be obtained, the applicant or petitioner must demonstrate the unavailability of both the required document and relevant secondary evidence, and submit two or more affidavits, sworn to or affirmed by persons who are not parties to the petition who have direct personal knowledge of the event and circumstances. Secondary evidence must overcome the unavailability of primary evidence, and affidavits must overcome the unavailability of both primary and secondary evidence.

The Petitioner has not submitted documentary evidence, either primary or secondary, to show that "over 50% of the market" has implemented his methods. The Petitioner also did not submit two or more sworn affidavits to that effect from individuals with direct personal knowledge of the event and circumstances. The Petitioner cited three unsworn letters, none of which indicate widespread adoption of the Petitioner's compliance tool. An official at [redacted] stated that the "approach was . . . shared by [redacted] with other regional banks," but this does not show that the other banks implemented that approach. The other letters (one of which is from a former co-worker who worked with the Petitioner on the [redacted] compliance issue) praised the Petitioner's method but did not indicate it was in wider use. The submitted evidence also does not show how the Petitioner is in a position to know that a significant number of major banks have used his method.

The Director found that the Petitioner had not shown his contributions to be of major significance to the field as a whole, beyond his own employer.

On appeal, the Petitioner again refers to the letters submitted with the initial filing of the petition. In particular, the Petitioner states that a senior vice president at [redacted] "specifically discusses how [the Petitioner's] work has major significance in the industry." The Petitioner then quotes two paragraphs of

the [redacted] official's letter, but the quoted passage does not show, or even imply, that other banks use the Petitioner's compliance tool; there is, instead, the more general statement that the Petitioner's [redacted] compliance tool "establishes the framework for using similar analytical skills to develop other compliance and risk management programs." Separately from that program, the Petitioner "has also developed expertise in the overall field of risk management on account of his performance in a number of key enterprise programs that are critical to support any [large] financial services company." (When the Petitioner, through counsel, listed the banks that are said to have implemented the tool, [redacted] was not among them.)

The submitted evidence shows that the Petitioner's work has been important to [redacted], but does not extrapolate to major significance in the field.

As the Petitioner has demonstrated that he satisfies three criteria, we will evaluate the totality of the evidence in the context of the final merits determination below.

B. Final Merits Determination

As the Petitioner submitted the requisite initial evidence, we will evaluate whether he has demonstrated, by a preponderance of the evidence, his 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 petitioner'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.[1] In this matter, we determine that the Petitioner has not shown his eligibility.

The Petitioner has held various positions at [redacted] since completing his master's degree in 2012. The record lacks an organizational chart to show precisely where the Petitioner stands in the company's hierarchy, but the record includes several letters from officials who indicate that the Petitioner is under their authority. His importance to the company derives not from his rank, but from the work he has done for his employer. A senior business director at [redacted] Financial Corporation stated that the Petitioner "leads a number of key [redacted] Management functions" including the '[redacted] Program" and "[redacted] Program." The importance of these functions and programs led the Director to grant that the Petitioner performs in a critical role for [redacted]. The importance of the Petitioner's role within the company is also evident from his high remuneration (which the Director also acknowledged) and from documentation of internal recognition for his contributions to various projects.

But the Petitioner's importance to his employer does not necessarily translate to sustained national or international acclaim throughout the field. The record contains only minimal, anecdotal information about the Petitioner's reputation beyond his employer. We have already discussed the Petitioner's assertion that, owing to confidentiality requirements and general banking culture, he cannot submit direct

[1] *See also* 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* 4 (Dec. 22, 2010), https://www.uscis.gov/policymanual/HTML/PolicyManual.html (stating that USCIS officers should then evaluate the evidence together when considering the petition in its entirety to determine if the petitioner has established, by a preponderance of the evidence, the required high level of expertise for the immigrant classification).

evidence of the impact and influence his work has had on other banking institutions. The question necessarily arises as to how the Petitioner himself could be aware of that impact and influence in the absence of evidence.

Much of the information and evidence submitted on appeal pertains to the Petitioner's judging activity. The Petitioner initially claimed to have "been *asked* to judge the work of others," but the record shows that the Petitioner *applied* to judge the awards, by clicking links on the awarding entities' websites.[2] The distinction is significant because to be singled out for a personal invitation to serve as a judge may be a sign of one's standing in one's field. In contrast, open solicitation for volunteers does not entail that kind of recognition.

The awarding entities accepted and approved the Petitioner's applications to serve as a judge, but the record lacks important information about the application and approval process. Most significantly, the record does not reveal how the entities determine whether to approve or deny a given application. Therefore, the Petitioner has not shown that approval of a judging application reflects existing acclaim in business. Likewise, the record does not show that being publicly identified as a judge results in, or contributes to, acclaim in the field. The Petitioner submits no documentary evidence about the reputations of the awarding entities apart from self-serving promotional materials and press releases from the entities themselves.

III. CONCLUSION

The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward the top. 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). Here, the Petitioner has not shown that the significance of his 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 Petitioner has garnered national or international acclaim in the field, and that 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 reasons discussed above, the Petitioner has not demonstrated his eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.

[2] The link on the [redacted] Awards' website reads "You Be The Judge," and the link on the [redacted] Awards' website reads "Volunteer To Be A Judge – Apply Now."