U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 4563711

Date: DEC. 18, 2019

Appeal of Texas Service Center Decision

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

The Petitioner, a general manager in firefighting technology, 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 Petitioner did not satisfy any of the initial evidentiary criteria, of which he must meet at least three.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* 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) 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 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).

II. ANALYSIS

The Petitioner claims to be board chairman and technology director at the [redacted] and the [redacted] in China.[1] 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).

In denying the petition, the Director determined that the Petitioner did not fulfill any of the initial evidentiary criteria. On appeal, the Petitioner argues that he meets four criteria. After reviewing all of the evidence in the record, we conclude that the record does not support a finding that the Petitioner satisfies the requirements of at least three criteria.

> *Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.* 8 C.F.R. § 204.5(h)(3)(ii).

The Petitioner argues that he meets this criterion based on membership with the National Technical Committee 113 on Fire Protection (NTCFP), the [redacted] Fire Standardization Technical Committee (GFSTC), and the [redacted] Fire Protection Association (GFPA). In order to satisfy this criterion, the Petitioner must show that membership in the association is based on being judged by recognized national or international experts as having outstanding achievements in the field for which classification is sought.[2]

As it relates to NTCFP, the Petitioner presented screenshots showing the following commissioner conditions:

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[1] *See* the Petitioner's résumé submitted at initial filing of the petition.

[2] *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* 6 (Dec. 22, 2010), https://www.uscis.gov/policymanual/HTML/PolicyManual.html (providing an example of admission to membership in the National Academy of Sciences as a Foreign Associate that requires individuals to be nominated by an academy member, and membership is ultimately granted based upon recognition of the individual's distinguished achievements in original research).

- Experts or technological backbones who are engaged in scientific research, production, supervision, inspection, management, and other aspects and are familiar to the standardization of business of the professional field and have relatively higher theories and more abundant practical experiences;
- Staff who have professional technical titles of intermediate level and above;
- Be familiar to and keen on the standardization work, observe the Articles of Association of Technical Commission, actively attend various activities organized by the Branch Technical Committee and fulfill the commissioners' duties and obligations;
- Have relatively good writing level and foreign language level; and
- Work in the organizations or legal persons which are established according to laws in the territory of China and are recommended by the working units.

Here, the Petitioner did not establish that the commissioner conditions reflect outstanding achievements as required by this regulatory criterion. Moreover, the requirements show minimal levels of work and experience rather than outstanding accomplishments in the field.[3] Furthermore, the Petitioner did not demonstrate that the conditions of engagement in scientific research, familiarity and keenness, and relatively good writing and foreign language skills are tantamount to outstanding achievements. In addition, the Petitioner did not show that recognized national or international experts judge membership with NTCFP.

Similarly, regarding GFSTC, the Petitioner provided a letter from the secretariat of GSTC outlining the following conditions of recruited members:

- Specialists with a higher theoretical level and relatively abundant practical experience in the field of fire protection and standardization;
- In-service personnel possessing the intermediate level or above professional and technical title, or holding the post corresponding to the intermediate or above professional and technical level;
- Personnel who love the cause of fire technical standardization, are familiar with standardization-related jobs and able to actively participate in standardization activities; and
- An individual shall not be the member of more than three technical committees concurrently.

Again, the Petitioner did not show that the membership requirements for GFSTC require outstanding achievements, as judged by recognized national or international experts. Further, the record reflects that GFSTC focuses on a certain level of experience and titles rather than outstanding accomplishments and achievements in the field.[4] Here, the Petitioner did not demonstrate that possessing a higher theoretical level, a professional and technical title, an abundant practical experience, and love for the cause of fire technical standardization are indicative of outstanding achievements consistent with this regulatory criterion. Further, the Petitioner did not establish that recognized national or international experts judge membership with GFSTC.

[3] *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 7 (instructing that relevant factors that may lead a conclusion that the alien's memberships in the associations were not based on outstanding achievements in the field include, but are not limited to, instances where the alien's membership was based solely on a level of education or years of experience in a particular field).

[4] *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 7.

Likewise, as it pertains to GFPA, the Petitioner presented screenshots reflecting the following individual membership requirements:

- Fire protection engineering technicians of the engineer level or equivalent to the engineer level and above;
- Fire protection professionals have the college degree or above and engaging in fire protection jobs for more than five years; and
- Personages of all circles keen on the cause of fire protection and supporting the work of GFPA.

The Petitioner did not establish that membership with GFPA requires outstanding achievements of its prospective members. Once again, the submitted evidence shows that GFPA membership is contingent upon achieving a certain level of engineering and higher education rather than attaining outstanding achievements in the field, as required by the regulation at 8 C.F.R. § 204.5(h)(3)(ii).[5] Moreover, the Petitioner did not show that recognized national or international experts judge the outstanding achievements for membership with GFPA.

Finally, the Petitioner argues that he submitted the "qualifications in the related field of Light Engineering and Safety Engineering, which are both representative of [his] field of endeavor." While the record contains selected translations for the "Qualification Conditions for Senior Engineers Majored in Light Industry Engineering of [redacted]" "Qualification Conditions for Engineers Majored in Safety Engineering of [redacted]" and "High, Medium and Primary Qualifications for Major of [redacted] Light Industry Engineering," the Petitioner did not establish how evidence relating to the qualification conditions of engineers in the [redacted] show that the membership requirements for NTCFP, GFSTC, and GFPA require outstanding achievements. Again, this criterion necessitates the Petitioner to show that his memberships in associations require outstanding achievements, as judged by recognized national or international experts, rather than the qualification conditions for engineers in [redacted]

For the reasons discussed above, the Petitioner did not establish that he satisfies 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 Petitioner contends that he "provided a plethora of original contributions to his field, resulting in widespread implementation of his developments, as evidenced by his numerous amounts of patents and subsequent business contracts." In order to satisfy the regulation at 8 C.F.R. § 204.5(h)(3)(v), a petitioner must establish that not only has he made original contributions but that they have been of major significance in the field.[6] For example, a petitioner may show that his 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.

[5] *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 7.

[6] *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8-9 (finding that although funded and published work may be "original," this fact alone is not sufficient to establish that the work is of major significance).

As it relates to his patents, the Petitioner provided evidence showing that he was named as an inventor for three Chinese patents: '[redacted]" "[redacted]" and "[redacted]" Moreover, the Petitioner submitted contracts between SDSIC and various Chinese railroads for the installation of [redacted] In addition, he offered contracts between GDSIC and Chinese businesses for the installation of [redacted] for various projects.

In general, a patent recognizes the originality of an invention or idea but does not necessarily establish it as a contribution of major significance in the field. Although the contracts indicate the business activity of SDSIC and GDSIC, the Petitioner did not demonstrate that the contracts involved the Petitioner's patents, as there are no identifying indicators reflecting that the intended installations utilized his patents or inventions. Even if SDSIC or GDSIC used his patents, the Petitioner did not show the relevance of the application of his patents in [redacted] and other construction projects. Here, the Petitioner did not establish that his patents rise to a level of major significance in the overall field rather than limited to some construction projects by his companies in China.[7] Again, the Petitioner did not demonstrate the influence of his patents to the greater fire safety field beyond his two companies.

Similarly, the Petitioner claims that he included evidence of his publications. Although the record shows that he provided translations of three abstracts entitled, '[redacted]" and '[redacted]' the Petitioner did not show the significance of this material. 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 Petitioner did not demonstrate the impact that his written work has had on the field.

Finally, the Petitioner presented five recommendation letters that praised him for his professional achievements but do not demonstrate their major significance in the field. In general, the letters recount the Petitioner's patents and claim that "[m]any fire fighting technologies invented by [the Petitioner] have obtained patent protection which show that their originality and significance have acquired affirmation from the national authorities" [redacted].[8] Again, patents do not automatically show contributions of major significance in the field unless the Petitioner can show that the field considers them to be of such importance and how their impact on the field rises to the level required by this criterion.

Moreover, the letters make broad statements without providing specific, detailed information explaining how the Petitioner's contributions are recognized by the field as being majorly significant. For instance [redacted] claimed that the Petitioner "often participates in the revision of industry standards and other professional activities which makes him the current status and development direction of the firefighting industry in real time." However, the letter does not elaborate on which industry standards the Petitioner has revised and how they are considered of major significance in the field. Likewise,

[7] *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8-9; *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).

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

[redacted] discussed the Petitioner's plan "to optimize the setting of fire door and the key points in the construction of high-rise buildings," which "has attracted the attention of many fire technical experts and the interest of developers of high-rise buildings." Again, the letter does not provide further explanation describing the significance or amount of attention and interest his plan has garnered from the greater field.

Here, the Petitioner's letters do not contain specific, detailed information explaining the unusual influence or high impact his patents and work has had on the overall field. Letters that specifically articulate how a petitioner's contributions are of major significance to the field and its impact on subsequent work add value.[9] On the other hand, letters that lack specifics and use hyperbolic language do not add value, and are not considered to be probative evidence that may form the basis for meeting this criterion.[10] 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).

For the reasons discussed above, considered both individually and collectively, the Petitioner has not shown that he has made original contributions of major significance in the field.

III. CONCLUSION

We find that the Petitioner does not satisfy any of the criteria regarding to memberships and original contributions of major significance. Although he claims eligibility for two additional criteria on appeal, relating to judging at 8 C.F.R. § 204.5(h)(3)(iv) and authorship of scholarly articles at 8 C.F.R. § 204.5(h)(3)(vi), we need not reach these additional grounds. As the Petitioner cannot fulfill the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3), we reserve these issues.[11] Accordingly, 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 acclaim and recognition required for the classification sought.

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. 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). 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 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).

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[9] *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8-9.

[10] *Id.* at 9. *See also Kazarian*, 580 F.3d at 1036, *aff'd in part*, 596 F.3d at 1115 (holding that 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).

[11] *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach).

Although the Petitioner has shown experience in the fire technology and safety field, the record does not contain sufficient evidence establishing that he is among the upper echelon in his field.

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, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.