U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF E-S-

DATE: FEB. 4, 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a chief technology officer, seeks classification 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 Petitioner 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 he 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 he or she is able to demonstrate that the standards at 8 C.F.R. § 204.5(h)(3)(i)-(x) do not readily apply to the individual'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 is a chief technology officer at [redacted] located in [redacted] Texas. Because he 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 found that the Petitioner met only two of the initial evidentiary criteria, judging under 8 C.F.R. § 204.5(h)(3)(iv) and leading or critical role under 8 C.F.R. § 204.5(h)(3)(viii).

On appeal, the Petitioner argues that USCIS found that he met the original contributions criterion at 8 C.F.R. § 204.5(h)(3)(v) in a previous filing.[1] Thus, he contends that he satisfied three criteria over the course of two petition filings. However, each extraordinary ability petition is reviewed on its own merits, and we are not bound by decisions of a service center or district director. *See La. Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, at *2 (E.D. La. 2000). Moreover, we have reviewed all of the evidence in the record and conclude that it does not support a finding that the Petitioner fulfills the requirements of at least three criteria.

[1] *See* USCIS decision dated, November 3, 2017, for [redacted] where the Director determined that the Petitioner satisfied the original contributions and leading or critical role criteria.

A. Evidentiary 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 screenshots, such as huffingtonpost.com, pcadvisor.co.uk, mashable.com, and the verge.com, reporting on the release of a computer application, [redacted] The evidence, however, does not reflect published material about the Petitioner.[2] In fact, the Petitioner is not mentioned in any of the material. Articles that are not about a petitioner do not fulfill this regulatory criterion. *See, e.g., Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at *1, *7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles regarding a show are not about the actor). Accordingly, the Petitioner did not demonstrate that he satisfies this criterion.

> *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 submitted evidence showing that he served as a judge for a database module add-on competition. As such, we agree with the Director that the Petitioner fulfills 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).

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. 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 in the field.

The record reflects that the Petitioner provided evidence relating to his development of three computer applications, websites, and software: [redacted] As previously mentioned relating to [redacted] the record contains screenshots reporting on the new application, such as theverge.com, mashable.com, and pcadvisor.co.uk. However, the screenshots do not reflect that [redacted] has significantly impacted the field in a major way rather than announcing the availability of a new application. Moreover, the Petitioner submitted screenshots from time.com and forbes.com listing [redacted] as one of the [redacted] and [redacted] as well as receiving third place at the [redacted]

[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* 7 (Dec. 22, 2010), https://www.uscis.gov/policymanual/HTML/PolicyManual.html.

Although received initial accolades for its ingenuity and originality, the record does not indicate that it garnered honors based on its recognition by the field as being greatly influential. The Petitioner, for example, did not show the influence of since its introduction. In addition, the Petitioner offered recommendation letters that explained the purpose of the application and described his role in its development but do not demonstrate how it is considered to have been of major significance in the field.[3] For instance, the authors generally indicate that it "reach[es] more than 2.5M users worldwide" without explaining the meaning of such usage numbers and how it establishes the impact of the application in the field.

Similarly, regarding , the recommendation letters confirm his work on the website without showing its impact of influence in the field. For example, , co-founder of stated that the Petitioner's "exceptional abilities were a key driver in making happen and leading to its ultimate acquisition and successful integration within other web assets." Although the record indicates that purchased neither nor the Petitioner, demonstrated how such acquisition shows that is considered to be a contribution of major significance to the greater field.[4] Moreover, director of product at indicated that the Petitioner "spearheaded the efforts to increase the scale in which the website worked as more and more users of [sic] different online properties came to the site." While briefly discussed the Petitioner's post-acquisition work, he did not establish how his contributions greatly impacted the overall field outside of

Likewise, as it pertains to the Petitioner offered a letter from , chief executive officer of who stated that the Petitioner led the development of the software product at and "was one of the most scalable products in the company allowing to serve thousands of customers from a single server." Here, commented on importance of the software to rather than showing the impact or influence to 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.[5] 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.[6] 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.

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

[4] *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).

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

[6] *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).

> *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).

Although the Director concluded that the Petitioner fulfilled this criterion, the record does not reflect that he performed in leading or critical roles for organizations or establishments that have a distinguished reputation.[7] The record reflects that the Petitioner claimed eligibility for this criterion based on his roles for [redacted] and [redacted] Although we agree that the Petitioner's roles were leading or critical, he did not establish that the organizations enjoy distinguished reputations.[8] The record contains screenshots relating to [redacted] application release and [redacted] acquisition of [redacted] as well as [redacted] 2015 tax documentation and [redacted] acquisition agreement. The Petitioner, however, did not show how the evidence demonstrates the eminent reputations for any of these organizations.

Because the Petitioner did not meet his burden of establish that he performed in a leading or critical role for organizations or establishment that have a distinguished reputation, we withdraw the Director's decision for this criterion.

B. O-1 Nonimmigrant Status

We note that the record reflects that the Petitioner received O-1 status, a classification reserved for nonimmigrants of extraordinary ability. Although USCIS has approved at least one O-1 nonimmigrant visa petition filed on behalf of the Petitioner, the prior approval does not preclude USCIS from denying an immigrant visa petition which is adjudicated based on a different standard – statute, regulations, and case law. Many Form I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *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). Furthermore, our authority over the USCIS service centers, the office adjudicating the nonimmigrant visa petition, is comparable to the relationship between a court of appeals and a district court. Even if a service center director has approved a nonimmigrant petition on behalf of an individual, we are not bound to follow that finding in the adjudication of another immigration petition. *Louisiana Philharmonic Orchestra v. INS*, No. 98-2855 at *2.

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

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

[8] *Id.* at 10-11 (defining *Merrian-Webster's Dictionary* definition of "distinguished" as marked by eminence, distinction, or excellence).

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).

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

ORDER: The appeal is dismissed.

Cite as *Matter of E-S-*, ID# 1973171 (AAO Feb. 4, 2019)