U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF C-M-S-, INC.

DATE: JULY 24, 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a molecular diagnostics company, seeks to classify the Beneficiary as an individual of extraordinary ability in the sciences. *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 although the Beneficiary satisfied four of the initial evidentiary criteria, in which she has to meet at least three, the Petitioner did not show her sustained national or international acclaim and demonstrate that she is among the small percentage at the very top of the field of endeavor.

On appeal, the Petitioner submits additional documentation and a brief, arguing that the Beneficiary has sustained the required acclaim and has risen to the very top of her field.

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,
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> (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
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> (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, located in [redacted], California, employs the Beneficiary as an *in vitro* diagnostic (IVD) assay development senior scientist. Because the Petitioner has not indicated or established that the Beneficiary has received a major, internationally recognized award, it must show that she satisfies 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 Beneficiary met four of the initial evidentiary criteria, original contributions under 8 C.F.R. § 204.5(h)(3)(v), scholarly articles under 8 C.F.R. § 204.5(h)(3)(vi), leading or critical role under 8 C.F.R. § 204.5(h)(3)(viii), and high salary under 8 C.F.R. § 204.5(h)(3)(ix). The record reflects that the Beneficiary authored approximately six scholarly articles in professional publications. In addition, the Petitioner demonstrated that the Beneficiary performed in a critical role in the development of a molecular diagnostic test for [redacted] Accordingly, we agree with the Director that the Petitioner fulfilled the scholarly articles and leading or critical role criteria. However, for the reasons discussed below, we do not concur with the Director's determination that the Beneficiary fulfilled the original contributions and high salary 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).

The Director found that the Beneficiary satisfied this criterion without identifying the original contributions of major significance and explaining her determination. 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.[1] For example, a petitioner may show that the 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. Because the record does not reflect that the Petitioner demonstrated that the Beneficiary meets this criterion, we will withdraw the findings of the Director for this criterion.

The record reflects that the Petitioner claimed that the Beneficiary "is the co-inventor on a patent for a new methodology she developed at [redacted] that is used in a molecular diagnostic test for sepsis, which is a potentially life-threatening complication of an infection." 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. Further, the Petitioner provided three recommendation letters that discussed the Beneficiary's involvement in the methodology but do not demonstrate that it resulted in a contribution of major significance in the field. For instance, [redacted], professor of microbiology at [redacted], described the Beneficiary's role in the research group and indicated that the method "allows for microbial [redacted] recovery from patient blood sample in less than 45 minutes in sufficient quantity and quality for identification by a molecular test." However, [redacted] did not explain how the method or patent has significantly impacted or influenced the field.

In addition, [redacted], head of the community-university liaison office at [redacted] confirmed that the Beneficiary "was part of the scientific team that developed an original method for extracting [redacted] from various microorganisms in blood infections" but did not further elaborate in explaining how the method is viewed in the field as having been of major significance. Instead, [redacted] speculated on the potential influence and on the possibility of being majorly significant at some point in the future. For example, [redacted] stated that "[t]he new method might assist physicians in rapidly and accurately diagnosing sepsis, which would ultimately benefit patients, decrease hospital stays, and improve laboratory efficiency." Moreover, [redacted] claimed that "[t]he time saved with [the Beneficiary's] patented method can be critically important when treating diseases." Similarly, [redacted] associate professor at the University of [redacted], asserted that "the potential application . . . will continue to guide research guide research in the field" and "has thus served as the potential launching point for researcher, medical practitioners, and businesses alike." While the letters may show promise in the Beneficiary's method, they do not establish how her method already qualifies as a contribution of major significance in the field, rather than prospective, potential impacts. Here, the significant nature of her method has yet to be determined or measured.

[1] *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), https://www.uscis.gov/policymanual/HTML/PolicyManual.html (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).

Furthermore, the Petitioner claimed that the Beneficiary's "patent has also garnered a significant number of citations, being cited by 20 other patent applications." However, the Petitioner did not articulate the significance or relevance of the citations. In addition, although citations are indicative that her work has received some attention from the field, the Petitioner did not demonstrate that her citation numbers represent majorly significant contributions in the field.[2] Here, the Petitioner has not sufficiently shown that the Beneficiary's citations to her patent are commensurate with contributions of major significance.

Moreover, the Petitioner asserted that [redacted] "has licensed the technology to a prominent company that is marketing it commercially (though the identity of this company is confidential based on the licensing agreement)." However, the licensing or marketing of a product based on the Beneficiary's patent does not necessarily show a contribution of major significance in the field. Further, without evidence demonstrating the extensive use, application, or influence, the Petitioner did not establish the overall field's general view of the technology as a contribution of major significance.[3]

The record also reflects that the Petitioner claimed that the Beneficiary's "work on the [redacted] a molecular diagnostic test for [redacted], is another original contribution of major significance." The Petitioner provided two recommendation letters that described her role in the development of [redacted] for [redacted] and made general statements without demonstrating the major significance of the [redacted] in the overall field. For example, [redacted], staff scientist at [redacted] indicated that the Beneficiary "was part of lead to two patent applications," "was actively involved in the development as well as in decision making on key design details," and "was one of the most senior scientists of the group working on the project." In the case here, [redacted] did not establish how her role in developing [redacted] constituted an original contribution of major significance in the field.

Further, [redacted] senior director for research and development at [redacted] stated that the [redacted] "has major significance in the field based on its improved diagnostic performance and its wide implementation." However, [redacted] did not further elaborate on her claim of "wide implementation" to show that the field considers the [redacted] to be a contribution of major significance.[4] Further, while [redacted] indicated that the [redacted] "has generated more than $15M in revenue" for [redacted] she did not establish the impact to the overall field beyond the employer.

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[2] *See* USCIS Policy Memorandum PM 602-0005.1, *supra,* at 8-9 (providing an example that peer-reviewed articles in scholarly journals that have provoked widespread commentary or received notice from others working in the field, or entries (particularly a goodly number) in a citation index which cite the individual's work as authoritative in the field, may be probative of the significance of the person's contributions to the field of endeavor).

[3] *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).

[4] Repeating the language of 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.).

Here, the letters do not contain specific, detailed information explaining the unusual influence or high impact the Beneficiary's work has had on the overall field. Letters that specifically articulate how a beneficiary'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).

As discussed earlier, we found that the Petitioner's evidence, including press releases and promotional material from [redacted] and independent clinical studies, demonstrated the Beneficiary's critical role in developing [redacted] for [redacted] meeting the leading or critical role criterion under 8 C.F.R. § 204.5(h)(3)(viii), a separate and distinct criterion. Consistent with the regulatory requirement that a beneficiary meet at least three separate criteria, we will generally not consider evidence relating to the leading or critical role criterion. Regardless, while the evidence shows that the Beneficiary contributed to [redacted]s activities, the Petitioner did not show the unusual influence or great impact in the overall field beyond her employer.

For the reasons discussed above, considered both individually and collectively, the Petitioner has not shown that the Beneficiary has made original contributions of major significance in the field. Accordingly, we withdraw the finding of the Director for 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 Director determined that the Beneficiary fulfilled this criterion without any discussion of the Petitioner's arguments or evaluation of the submitted documentation. 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.[7] As the Petitioner has not established that the Beneficiary has commanded a high salary in relation to others, we must withdraw the Director's decision for this criterion.

The record reflects that the Petitioner indicated it its initial cover letter that it has employed the Beneficiary as an IVD assay development senior scientist. In addition, the Petitioner provided the Beneficiary's 2017 Form W-2, Wage and Tax Statement, reflecting an annual salary of $108,000. As a comparison, the Petitioner submitted prevailing wage data from the Foreign Labor Certification Data Center (FLCDC) for "biological scientists" reflecting a Level 4 Wage of $92,955 per year.[8] In addition, the Petitioner offered a screenshot from glassdoor.com for "molecular biologists" reflecting a high salary of $93,000.

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[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).

[7] *See* USCIS Policy Memorandum PM-602-0005.1, *supra*, at 11.

[8] 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 23, 2019, and incorporated into record of proceedings.

Although the Petitioner compares the Beneficiary's compensation to molecular biologists, her position is a senior scientist. The Petitioner must present evidence showing that the Beneficiary has earned a high salary or significantly high remuneration in comparison with those performing similar services in the field. *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 Skokos v. U.S. Dept. of Homeland Sec.*, 420 F. App'x 712, 713-14 (9th Cir. 2011) (finding salary information for those performing lesser duties is not a comparison to others in the field); *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 has not established that the fully competent wage information for molecular biologists constitutes an appropriate basis for comparison. Moreover, the record contains a screenshot from salarylist.com reflecting salaries for senior scientists. Specifically, the screenshot shows that the average salary for senior scientists is $86,781, with $250,000 classified as "high." Thus, the Petitioner's evidence does not demonstrate that the Beneficiary earned a salary placing her at the high end of the spectrum for wages of other senior scientists.

Based on the foregoing, the Petitioner has not demonstrated that the Beneficiary meets this regulatory criterion. Accordingly, we withdraw the findings of the Director for 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 the significance 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 she 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 the Beneficiary's 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. In visa petition proceedings, the petitioner bears the burden to establish eligibility for the immigration benefit sought. Section 291

of the Act, 8 U.S.C. § 1361; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012). Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of C-M-S-, Inc.*, ID# 3712113 (AAO July 24, 2019)