U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF W-C-

DATE: JUNE 25, 2019

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a financier, 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 Texas Service Center approved the Form I-140, Immigrant Petition for Alien Worker. However, the Director of the Texas Service Center subsequently issued two notices of intent to revoke and ultimately revoked the approval of the immigrant petition, finding that U.S. Citizenship and Immigration Services (USCIS) had approved the petition in error. Specifically, the Director determined that the Petitioner did not meet the initial evidence requirements set forth at 8 C.F.R. § 204.5(h)(3), which require documentation of a one-time achievement or evidence that meets at least three of the 10 regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Petitioner filed a joint motion to reopen and reconsider, and the Director upheld his prior decision revoking the approval of the petition.

The matter is now before us 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).

With respect to revocations, the Secretary of Homeland Security "may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition . . . ." Section 205 of the Act, 8 U.S.C. § 1155. By regulation, this revocation authority is delegated to any USCIS officer who is authorized to approve an immigrant visa petition. 8 C.F.R. § 205.2(a). USCIS must give the petitioner notice of its intent to revoke the prior approval of the petition and the opportunity to submit evidence in opposition thereto before proceeding with written notice of revocation. *See* 8 C.F.R. § 205.2(b)-(c). The Board of Immigration Appeals has discussed revocations on notice as follows:

> [A] notice of intention to revoke a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if unexplained and unrebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.[1]

[1] *Matter of Ho*, 19 I&N Dec. 582, 590 (BIA 1988) (citing *Matter of Estime*, 19 I&N Dec. 450 (BIA 1987).

By itself, the Director's realization that a petition was incorrectly approved is good and sufficient cause for the revocation of the approval of an immigrant petition. *Id.* The approval of a visa petition vests no rights in the beneficiary of the petition, as approval of a visa petition is but a preliminary step in the visa application process. *Id*, at 589. A beneficiary is not, by mere approval of the petition, entitled to an immigrant visa. *Id*,

II. ANALYSIS

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). Following receipt of the Petitioner's responses to two notices of intent to revoke (NOIR), the Director revoked the approval of the petition, concluding that the Petitioner only met one of the initial evidentiary criteria for leading or critical role at 8 C.F.R. § 204.5(h)(3)(viii).[2] On appeal, the Petitioner maintains that he meets the criteria for awards, membership, judging, original contributions of major significance, and scholarly articles at 8 C.F.R. § 204.5(h)(3)(i), (ii), (iv), (v), and (vi), respectively.[3] Upon reviewing all of the evidence in the record, we find that the Petitioner has not established that he satisfies at least three criteria.

A. Evidentiary Criteria

> *Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.* 8 C.F.R. § 204.5(h)(3)(i).

In the notice of revocation, the Director held that the Petitioner had not established that his placement in the First National Firm Offer [redacted] Contest met the requirements of this criterion. The Director also held that the Petitioner had not resolved the discrepancies in the record regarding the name of this competition, the dates it took place, and the nickname that he used in competing. The Director further noted that the record did not contain properly certified translations in the record under 8 C.F.R. § 103.2(b)(3). On appeal, the Petitioner provides additional certified translations and asserts that the evidence in the record meets this criterion for his fifth place finish in this competition.

Regarding the discrepancies noted above, we find that the Petitioner has resolved the issues regarding the name of the competition and the nickname he used while participating in it, but he has not resolved the discrepancies regarding the dates of this competition as contained in the supporting documentation of this event. Specifically, the record contains a "Certificate of Award" from the First National Firm Offer [redacted] Organizing Committee and a letter from [redacted], the president of this committee, indicating that this competition took place in 2011. Yet, the record contains additional supporting documentation stating that this competition took place in 2012. In a statement from the Petitioner, he contends that the competition took place in 2011 but that his assistant transcribed the

[2] The first NOIR referenced discrepancies in the record regarding the amount of income the Petitioner earned per year, his educational credentials, and whether the business that had petitioned for him to receive an O-1 visa was actively conducting business. The second NOIR focused on whether the Petitioner met at least three of the ten criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x).

[3] On appeal, the Petitioner has not addressed the following criteria that he had previously claimed to meet: published material, display, high salary, and commercial successes in the performing arts at 8 C.F.R. § 204.5(h)(3)(iii), (vii), (ix), and (x).

documents for the translators and mistakenly transcribed "2012" when it should have been "2011." However, we note that several of the original documents in Chinese contained the number 2012 in the sections corresponding with the translations, demonstrating that this is not an error in transcription. For example, the record contains another letter from [redacted] dated February 2012, indicating that this competition occurred from April through July 2012, and those dates appear in the original document. The Director notified the Petitioner of the discrepancies regarding the dates of this competition in the second notice of intent to revoke and in the notice of revocation, but the Petitioner did not discuss these issues on appeal. The Petitioner must resolve these inconsistencies in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92.

In addition, evidence submitted on appeal introduces new inconsistencies regarding the award the Petitioner claims to have won. He originally submitted a "Certificate of Award" stating that he had "the honor to win the honorable mention of 'China Ten Outstanding [redacted] Talent.'" A subsequent translation of this same document submitted on appeal states, "[t]his is to certify that [the Petitioner has been] awarded as 'China's Top 10 Outstanding [redacted] Talent' Award." While the record contains a letter congratulating the Petitioner for having won fifth place in the competition, it lacks evidence demonstrating which translation is accurate and resolving the inconsistency of whether he won an award or was honorably mentioned. The Petitioner must resolve this inconsistency with independent, objective evidence to establish what award, if any, he received. *Id.*

Even if the Petitioner had established that he received a fifth place award in this [redacted] competition, he must establish that his ranking in this competition represents a nationally or internationally recognized prize or award for excellence in the field. The Petitioner states that the two screenshots of a CCTV-2 (China Central Television) video contain press coverage of this event, but the record does not contain a transcript of the video. The Director noted the lack of a transcript in his decision dismissing the joint motions, but the Petitioner did not resolve this on appeal. Therefore, without evidence showing the national or international recognition of the award, if any, the Petitioner received, he has not established that he meets this criterion.[4]

> *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).

In the notice of revocation, the Director held that the Petitioner had not met this criterion for his position as the deputy director for the [redacted] and as senior financial advisor for the [redacted], noting that the Petitioner had not submitted the by-laws for either organization to demonstrate that membership in these organizations was based on outstanding achievements. In addition, the Director noted that employment for an

[4] The Petitioner argues that his placement in the First National [redacted] Competition should be considered as comparable evidence of the awards criterion at 8 C.F.R. § 204.5(h)(3)(i), which requires nationally or internationally recognized awards. The regulation at 8 C.F.R. § 204.5(h)(4) allows for comparable evidence if the listed criteria do not readily apply to his occupation. As the Petitioner asserts in his brief that he meets this criterion, he has not shown how this criterion does not apply to his occupation.

organization does not satisfy this criterion since one may be hired by an employer without necessarily having had outstanding achievements.

On appeal, the Petitioner only raises the issue of his position with the [redacted] He highlights a letter from [redacted], the President of the [redacted] stating that the enrollment standard for individual members to join the organization includes that the applicant has made "great contribution" to the "health and sanitation domain in their host country," and by "being outstanding as talents" or having "special contributions on different fields."

We note that the Petitioner has not addressed the concern noted by the Director regarding the difference between admission as a member of the organization and employment by it. The record does not demonstrate that he meets the admission requirements identified by [redacted], as the Petitioner does not identify what great or special contributions he made or what outstanding talents he possesses that would form the basis for his admission. Nor has he demonstrated that the organization's admission criteria, as explained by [redacted] amount to outstanding achievements as required by the regulation. Furthermore, he has not submitted evidence establishing that the individuals selecting him for this position are national or international experts in the field.

Additionally, though not addressed by the Director, we find that the Petitioner has not established that the [redacted] satisfies the regulation's requirement that the organization be in the field for which the classification is sought. The evidence in the record does not demonstrate that [redacted], a health and sanitation organization, is an association within the Petitioner's field. Therefore, he has not eligibility under 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 claims to meet this criterion as a judge in the First National [redacted] Competition, the same event discussed in the awards criterion above. The record contains a documentation about the Petitioner's role as a judge in this competition, stating that his responsibilities included "commenting [*sic*] players, analyzing their styles and giving them some professional advises [*sic*]."

Due to the discrepancies in the record discussed above, the record does not establish when this event took place and what role the Petitioner filled. The record contains a Letter of Appointment inviting the Petitioner to judge the First National Firm Offer [redacted] Contest from April through July 2012. It also contains a letter dated February 2012 from the Petitioner accepting the offer to serve as a judge for this contest, stating that this is the first contest they will have after more than ten years of business. This conflicts with the other evidence submitted, such as the award certificate and one of the screenshots of the CCTV-2 documentation which indicate that the competition occurred in 2011, and the Petitioner's own statement indicating that this competition occurs every four years. The Petitioner has not submitted evidence to overcome the discrepancies in the record regarding this event, and thus has not demonstrated by a preponderance of the evidence that he has actually participated in judging the works of others. Therefore, he has not established that he 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).

This regulatory criterion contains multiple evidentiary elements that the Petitioner must satisfy. He must demonstrate that his contributions are original and scientific, scholarly, artistic, athletic, or business-related in nature. The contributions must have already been realized, rather than being prospective possibilities. He must also establish that the contributions rise to the level of major significance in the field as a whole, rather than to a project or to an organization. The phrase "major significance" is not superfluous and thus has meaning. *See Silverman v. Eastrich Multiple Investor Fund, L.P.,* 51 F.3d 28, 31 (3d Cir. 1995), *quoted in APWU v. Potter,* 343 F.3d 619, 626 (2d Cir. 2003).

The Director held that the Petitioner had not met this criterion, concluding that the evidence in the record did not establish that his contributions significantly impacted the field to establish that they are of major significance in the field. On appeal, the Petitioner states that his "contributions as a leading financier of the [redacted] Project have had and will continue to have an incalculable impact on the people of China." He states that he has committed to raising 2 billion Chinese yuan (CNY) for this building project and "will be a key financier in the construction of a [redacted] in the southern region of China."

We note that the Petitioner's claims represent a prospective endeavor, both regarding his actions and their impact, while this criterion requires original contributions of major significance that have already taken place. Furthermore, the record does not contain evidence demonstrating to what extent he has raised funding for this project or how securing such funding equates to original contributions of major significance in the field. The Petitioner has submitted photographs of a signing ceremony for the [redacted] Project, which his project financing model document states relates to the [redacted] project, but he has not explained the significance of this agreement in his field. He has also submitted three depictions of buildings under the title "[redacted] Project Design Sketch," including the [redacted] Building, the [redacted] University, and the [redacted] Park. However, the record does not demonstrate that these buildings have been built, identify the Petitioner's contribution, or explain how these structures represents original contribution that have significantly impacted the field. *See Kazarian*, 580 F.3d at 1036; aff'd in part, 596 F.3d at 1115 (holding that the petitioner had not established how his contributions had influenced the field to equate to contributions of major significance).

The Petitioner also references his contributions as a financier of other infrastructure projects that he asserts are of major significance to Chinese people who will benefit from these developments. For example, he states on appeal that "[his] core group of pioneering infrastructure projects also includes affordable retirement living for tens of thousands of China's aging population in China's [redacted] city and a truly amazing and expansive new public park dedicated to China's 5000 years of cultural history." The Petitioner asserts that he developed a project financing model that he utilized in financing certain of these infrastructure projects. While the record contains a statement from the Petitioner in which he describes his financing model, he has not submitted evidence demonstrating

how this financing model has influenced others in the field to establish that it is a contribution of major significance. The term "contributions of major significance" connotes that the Petitioner's work has significantly impacted the field. *See Visinscaia,* 4 F. Supp. 3d at 134.

The Petitioner also claims that he is "widely recognized by financial experts in China for revolutionizing the field of finance through his original pioneering [redacted] theory." He cites his paper published in *Futures Daily* entitled, '[redacted] The Petitioner has not presented evidence showing how influential this has been in the field through citations to this work or other similar evidence to establish that others in the field have utilized or recognized the importance of his [redacted] theory. For the reasons discussed above, the Petitioner has not established that he meets this criterion.

> *Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.* 8 C.F.R. § 204.5(h)(3)(vi).

A scholarly article in the academic arena "reports on original research, experimentation, or philosophical discourse" and "should have footnotes, endnotes, or a bibliography."[5] For other fields, a scholarly article should be written for learned persons in the field, which means individuals "having or demonstrating profound knowledge or scholarship."[6] The record contains three articles authored by the Petitioner that were published in *Futures Daily*. In the notice of revocation, the Director concluded that the Petitioner had not established that these articles were published in professional or major trade publications or other major media.

We find that the article entitled, [redacted] constitutes an article that is written for learned persons in the field. On appeal, the Petitioner submits additional documentation about *Futures Daily* indicating that this is a professional publication. Accordingly, the Petitioner has established that he 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).

For a leading role, the evidence must establish that the petitioner is or was a leader.[7] If a critical role, the evidence must establish that the petitioner has contributed in a way that is of significant importance to the outcome of the organization or establishment's activities. A supporting role may be considered "critical" if the petitioner's performance in the role is or was important in that way. It is not the title of the petitioner's role, but rather his or her performance in the role that determines whether the role is or was critical.[8]

The Director held that the Petitioner met the requirements of this criterion. We disagree. With the initial filing, the Petitioner stated that he performed a leading role as the financier of certain

[5] USCIS Policy Memorandum PM-602-0005.1, *supra*, at 9.
[6] *Id.*
[7] *Id.* at 10.
[8] *See* USCIS Policy Memorandum PM-602-0005.1, *supra,* at 10.

infrastructure projects, such as the [redacted] Project, the [redacted] Building, the [redacted] Project, and the [redacted] Park of China projects. The record contains a letter from [redacted], a member of China's Standing Committee Sixth National Association for Minority and Technological Progress to Promote Special Committees, stating that Petitioner presided over the [redacted] Project and that thanks to his "excellent work and unique business intelligence, these projects . . . were the most successful projects in the country." [redacted] does not describe the Petitioner's responsibilities and accomplishments, or how they made his role leading or critical. For the other projects, the record contains letters attesting to his role as a financier, but these letters indicate that he is currently undertaking, or planning to undertake, the financing for these projects. They do not describe how he has performed a leading or critical role. Accordingly, he has not established that his role was leading or critical. Furthermore, the Petitioner has not established that these construction projects constitute organizations or establishments that have a distinguished reputation. The Petitioner has not provided evidence demonstrating that these infrastructure projects equate to organizations or establishments or that they have a distinguished reputation.

The Petitioner also contends that he satisfies this eligibility requirement through his role with the [redacted] Foundation, which he established to facilitate investment transactions in China. However, he has not provided evidence to show that this organization has a distinguished reputation. Therefore, for the reasons above, the Petitioner has not established that he meets the requirements of 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). 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.

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, it is the petitioner's 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 W-C-*, ID# 2899475 (AAO June 25, 2019)