U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF G-L-

DATE: MAY 3, 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner claims to be "an internationally renowned businessman and scientist" and seeks classification as an individual of extraordinary ability in the field of "release film and membrane coating technology." *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 petition, concluding that the Petitioner had satisfied one of the initial ten evidentiary criteria, of which he must meet at least three.

On appeal, the Petitioner contends that he meets at least three criteria and maintains that he qualifies for the classification.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 203(b)(1)(A) of the Act makes visas available to certain immigrants 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 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 the petitioner does not submit this evidence, then he or she must provide documentation that meets at least three of the ten criteria listed under 8 C.F.R. § 204.5(h)(3)(i)-(x) (including items such as qualifying awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the submitted material in a final merits determination and assess whether the record, as a whole, 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, 1119-20 (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, 1343 (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 claims to be an extraordinary businessman and scientist in "the field of release film and membrane coating technology." In his July 2017 statement, he stated that he intends to "promote the development of photoelectric film industry in the United States." In response to the Director's request for evidence (RFE), he offered documents showing that he registered [redacted] Inc., with the California Secretary of State in [redacted] 2018. He presented a business plan, noting that he formed "[the business] to develop and establish a successful production and sales company that will specialize in producing high-end release liners (or release films) and thin films, both commonly used and needed by the liquid crystal display (LCD) industry here in the U.S. and around the world."

The Director concluded that the Petitioner met the authorship of scholarly articles criterion under 8 C.F.R. § 204.5(h)(3)(vi). The record supports this conclusion. Specifically, the Petitioner has offered evidence confirming that he has authored scholarly articles that were published in professional journals, including '[redacted]' that appeared in *Chinese Journal of Materials Research*, and '[redacted] that appeared in *Gansu Science and Technology*. While he has satisfied one criterion, 8 C.F.R. § 204.5(h)(3)(vi), as we will discuss below, he has not demonstrated, by a preponderance of the evidence,[1] that he meets the initial evidence requirements of satisfying at least three criteria.

[1] If a petitioner submits relevant, probative, and credible evidence that leads U.S. Citizenship and Immigration Services (USCIS) to believe that the claim is "more likely than not" or "probably true," the petitioner has satisfied the

A. Regulatory Criteria.[2]

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).

The Petitioner maintains that he meets this criterion because of his company's accolades. Specifically, he submitted in his initial filing two "Certificate[s] of High and New Technology Product," dated November 2009 and September 2013, respectively, that were issued by the " Science and Technology Department," each noting a 5-year validity period. They list Ltd., as the "Undertaken Unit," but do not reference the Petitioner by name. According to a June 2017 letter from the director of academic committee in the College of Materials Science and Engineering at University in China, the Petitioner's company won the certificate when "529 types of innovative thin materials were submitted to compete for the title of 'High and New Technology Product' in 2009."

The Petitioner has also offered evidence showing that Ltd., was named the "National High and New Technology Enterprise" by China's "Ministry of Science and Technology " "Ministry of Finance ," "State Administration of Taxation ," and " Local Taxation Bureau." The award specified a validity period of three years. He, citing the websites innocom.gov.cn and most.gov.cn, claimed in his initial filing that "[t]his award is regarded as the highest certification for technology enterprises in China" and "is part of China's torch program that is a guidance program for developing Chinese high-tech industry." In an April 2018 letter, – whose resume indicates that he is "an academician of the Chinese Academy of Engineering" – stated that the Petitioner's company "was the only one selected" for the award "among more than 800 thin film production enterprises nationwide competing for the title in 2014.

The record is insufficient to show that the Petitioner satisfies this criterion. Initially, he has not demonstrated his receipt of a prize or award. Rather, the recipient of the accolades was Ltd. According to an April 2018 letter from a shareholder, executive vice president, and deputy general manager of the company, the Petitioner has been its chief executive officer since 2007. Assuming *arguendo* that in light of his role in and involvement with the business, he could be considered the recipient of the 2009 and 2013 certificates and the 2014 award, he has nonetheless not shown that they are qualifying under the criterion.

While a number of reference letters allege that the accolades are nationally recognized, the record is insufficient to substantiate this assertion. The issuing entities listed on the certificates and award are provincial organizations. The 2009 and 2013 certificates were from Science and Technology

"preponderance of the evidence" standard of proof. 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/sites/default/files/USCIS/Laws/Memoranda/i-140-evidence-pm-6002-005-1.pdf.

[2] The Petitioner has not alleged, and the record does not demonstrate, that he has received a major, internationally recognized award. *See* 8 C.F.R. § 204.5(h)(3). As such, he must provide documentation that meets at least three of the ten criteria listed under 8 C.F.R. § 204.5(h)(3)(i)-(x) to satisfy the initial evidence requirements. We will discuss in this decision the criteria that the Petitioner claims he meets or for which he has submitted relevant evidence.

Department, and the 2014 award was from various provincial bureaus. According to the 2013 ' Province High-Tech Product Certification Regulations," which the Petitioner submitted with his petition, companies may apply for "the identification of high-tech products in Province," the "Provincial Department of Science and Technology will [then] organize regular expert consultations and give approval for qualified products," and issue the certificates. This document does not support the Petitioner's claim that the 2009 and 2013 certificates – which are provincial in nature and could be awarded to multiple companies each year – are nationally or internationally recognized prizes or awards for excellence in the field, as required under the criterion.

Similarly, the Petitioner has not shown that the 2014 award qualifies under the criterion. The record lacks evidence from the award issuing entity, establishing that Ltd., received the award in recognition for its excellence in the field of endeavor. The Petitioner has also not offered sufficient documentation demonstrating that this accolade, which is from a province entity, is recognized outside of the organization, on a national or international level. In light of the above, the Petitioner has not satisfied this criterion.

> *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 claims to meet this criterion because he is an "expert member" of the He has submitted a document that discusses the organization and qualifications for its individual members. This document, however, does not explain how someone becomes an "expert member" or demonstrates that the organization requires "outstanding achievements" from its members. The record includes a March 2018 letter from who was the executive director of the organization between 2012 and 2016. He indicated that to qualify as an expert member, an individual must be recognized for "achieving multiple significant research result[s], for [his or her] ability to independently invent, create, and innovate, for [his or her] ability and talent to evaluate, guide and set research and development directions in [a] specific field and discipline of chemical industry." The organization's membership materials, however, do not substantiate statements. Regardless, the Petitioner has not shown that the expert membership requirements, as alleged by constitute "outstanding achievements . . . as judged by recognized national or international experts in their disciplines or fields," as required by the criterion.

Similarly, the Petitioner's membership in the does not satisfy this criterion. According to a document from the organization, an individual is qualified to join the association if he or she: "(1) Advocate[s] Articles of the Association; (2) Ha[s] the will to join in the Association; [and] (3) Ha[s] certain impact in business fields (industry, discipline) of the Association." The record includes a March 2018 letter from , the vice president and executive director of the association, who provided that "certain impact" means that an applicant must have received recommendation from the association's director, published at least 2 professional essays, been granted patents, and been in the semiconductor or related field for 5 years. While these requirements show that an applicant must be active and productive in the field, the Petitioner has not established that they confirm the association "require[s] outstanding achievements of [its] members,

as judged by recognized national or international experts in their disciplines or fields," as required by the criterion.

Finally, the Petitioner has not shown that Ltd.'s "membership unit" in the China Optics and Optoelectronics Manufactures Association satisfies this criterion. The "Membership Unit" certificate does not identify the Petitioner as a member. Documents from the association do not specify how an individual could become a member. Rather, they indicate that the association accepts only "enterprises and institutions" as members. While a March 2018 letter from an executive vice president of the association, provides that the Petitioner became a member "[b]ecause of [his] contribution to the industry and his expertise in release film and membrane technology," the Petitioner has not submitted sufficient documentation detailing the criteria and procedure under which an individual becomes a member of the association. Without additional corroboration, he has not established that he is a member of the association or that the association "require[s] outstanding achievements of [its] members, as judged by recognized national or international experts in their disciplines or fields," as required under 8 C.F.R. § 204.5(h)(3)(ii). In light of the above, the Petitioner has not met 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).

To satisfy this criterion, the Petitioner must establish that not only has he made original contributions but that they have been of major significance in the field. Major significance in the field may be shown through evidence that his research findings or original methods or processes have been widely accepted and implemented throughout the field, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance in the field. *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/sites/default/files/USCIS/Laws/Memoranda/i-140-evidence-pm-6002-005-1.pdf.

The record is insufficient to demonstrate that the Petitioner has satisfied the criterion under 8 C.F.R. § 204.5(h)(3)(v). He has offered evidence showing that he has received patents for his inventions. Evidence of patents shows that he has been involved in original research, but the record does not confirm that his inventions constitute contributions of major significance in the field. For example, he has not demonstrated that his inventions have impacted, influenced, or advanced the field to a level consistent with major significance.

While the record includes a number of reference letters, they do not sufficiently demonstrate that the Petitioner has made contributions of major significance in the field. *See* 8 C.F.R. § 204.5(h)(3)(v). According to a July 2017 letter from the vice president of for Asian regional sales, "the raw material of touch screen control protective film applied by and Ltd., is developed & invented by [the Petitioner] and produced by " indicated that products are "assembled in the factory of Ltd." He further stated that he believed "products of , Ltd., are also supplied to ." s letter shows that

the Petitioner's work has had some impact in the field and his inventions has been used in the field, but the record is insufficient to show that the level of the impact and use in the field are remarkable and widespread, rising to the level of contributions of major significance.

The reference letters, including those not specifically discussed in this decision, and other evidence in the record show that the Petitioner's work has added to the general pool of knowledge in the field. They are, however, insufficient to confirm widespread commentary or acceptance of his findings, the field has regarded his work as authoritative, or it has advanced the field in a significant way. *See Visinscaia*, 4 F. Supp. 3d at 134-35 (upholding a finding that a ballroom dancer had not met this criterion because she did not demonstrate her impact in the field as a whole). Letters that repeat the regulatory language but do not sufficiently explain how an individual's contributions have already influenced the field significantly are insufficient to satisfy this criterion. *See Kazarian v. USCIS*, 580 F. 3d 1030, 1036 (9th Cir. 2009), *aff'd in part*, 596 F. 3d 1115, 1122 (9th Cir. 2010). In light of the above, the Petitioner has not shown that he has made 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).

The Petitioner states that he satisfies this criterion because of his role as the general manager of [redacted] Ltd. According to [redacted] the Petitioner "played a leading and critical role in the research and development of [the company's] total 16 patents covering product and product related production technologies and devices." [redacted] provided that the Petitioner "is the sole inventor for all 16 patents in recognition of his hands-on involvement and direction setting in the process of invention." In light of this letter as well as other documents in the record, the Petitioner has shown that he has performed a leading or critical role for this entity.

Notwithstanding this conclusion, the Petitioner has not established that he satisfies this criterion because the record is insufficient to demonstrate that [redacted] Ltd., has a distinguished reputation. The Petitioner has presented evidence relating to the company, including documents showing that it has received a number of utility model patents as well as certificates and awards from provincial organizations, and it has supplied component parts to [redacted] and [redacted] products. These documents indicate that the business is active and successful, but they are insufficient to demonstrate it has a distinguished reputation.

Although the record includes reference letters praising [redacted] Ltd., they do not point to documents provided that substantiate the entity's reputation. For example, a July 2017 letter from [redacted] an acting chief executive officer of [redacted] Ltd., provides that [redacted] Ltd., "has become a top enterprise in global film industry," neither [redacted] nor the Petitioner, however, has presented independent and credible evidence, such as materials from industry publications, confirming that the business has a distinguished reputation. In light of the above, the Petitioner has not demonstrated that he meets this criterion.

B. Request for Evidence

On appeal, the Petitioner alleges that the Director erred in not issuing an RFE, notifying him that the record lacked sufficient evidence to satisfy the relevant criteria. He, citing USCIS Policy Memorandum PM-602-0085, *Requests for Evidence and Notices of Intent to Deny* 2 (June 3, 2013), https://www.uscis.gov/legal-resources/policy-memoranda,[3] claims that "[i]t is a violation of Procedural Due Process that [the Director did not] give [him] proper prior notice and the opportunity to rebut such evidence and to present evidence [o]n his behalf."

The record shows that the Director did issue an RFE which explained to the Petitioner the two-part review process under which his documents would first be analyzed to determine if they fulfill at least three of the ten criteria under 8 C.F.R. § 204.5(h)(3)(i)-(x); and if so, the entire record would then be considered in a final merits determination. *See Kazarian*, 596 F.3d at 1119-20. Page 5 of the RFE specified that the evidence in the record did not establish that the Petitioner had met the initial evidence requirements, and "afford[ed him] the opportunity to submit additional evidence to establish that [he] meets the regulatory criteria." The RFE reiterated that "[t]his is the [P]etitioner's opportunity to articulate further details or provide additional evidence in regards to how the evidence submitted in the initial filing or in response to this . . . RFE establishes that [he] meets the requirements" for the classification. The record thus indicates that the Director did notify the Petitioner the submitted evidence was insufficient to establish his eligibility. *See* USCIS Policy Memorandum PM-602-0085, *supra*, at 2 (providing that "[i]f not all of the required initial evidence has been submitted . . . , the officer should issue an RFE").

Regardless, under 8 C.F.R. § 103.2(b)(8), while the Director may issue an RFE, it is also within her discretion to "deny the benefit request for lack of initial evidence or for ineligibility," if "all required initial evidence is not submitted with the benefit request or does not demonstrate eligibility." Moreover, as the Petitioner has filed the instant appeal, he has been afforded an opportunity to supplement the record to demonstrate his eligibility for the classification as well as to address the concerns the Director raised in her denial of the petition.

In light of the above reasons, we conclude that the record does not support the Petitioner's contentions. Specifically, the evidence does not show that the Director erred in regard to the RFE or that she violated the Petitioner's rights to procedural due process.

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, upon a review of

[3] In 2018, USCIS rescinded the 2013 Policy Memorandum, noting that "[i]f all required initial evidence is not submitted with the benefit request, USCIS in its discretion may deny the benefit request for failure to establish eligibility based on lack of required initial evidence." USCIS Policy Memorandum PM-602-0163, *Issuance of Certain RFEs and NOIDs; Revisions to Adjudicator's Field Manual (AFM) Chapter 10.5(a), Chapter 10.5(b)* 3 (July 13, 2018), https://www.uscis.gov/legal-resources/policy-memoranda. The 2018 Policy Memorandum applies to applications received after September 11, 2018.

the record in its entirety, we conclude that it does not support a finding that he has established the acclaim and recognition required for this classification.

The Petitioner seeks a highly restrictive visa classification, intended for individuals who are 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 academic, scholarly, research, and professional accomplishments 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; 8 C.F.R. § 204.5(h)(2).

The record does not establish that the Petitioner qualifies for classification as an individual of extraordinary ability. The appeal will therefore 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 G-L-*, ID# 3350519 (AAO May 3, 2019)