U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF N-M-

DATE: MAY 17, 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, an investment banking professional, 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 shown that he only met one of the ten initial evidentiary criteria, of which he must meet at least three.

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,
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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). 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).

II. ANALYSIS

The Petitioner is a senior investment banking associate. As he has not received a major, internationally recognized award, the record must demonstrate that he satisfies at least three of the ten criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). In denying the petition, the Director held that the Petitioner had not established that he met the criteria for membership, published material, original contributions of major significance, scholarly articles, and leading or critical role at 8 C.F.R. § 204.5(h)(3)(ii), (iii), (v), (vi), and (viii), respectively. While the Director held that the Petitioner met the criteria for judging and high salary at 8 C.F.R. § 204.5(h)(3)(iv) and (ix), he denied the petition because the Petitioner had not met at least three criteria under 8 C.F.R. § 204.5(h)(3)(i)-(x). On appeal, the Petitioner asserts that he meets the criteria for original contributions of major significance and leading or critical role, in addition to the criteria for judging and high salary, as held by the Director. Upon reviewing all of the evidence in the record, we conclude that the Petitioner has not established that he meets at least three criteria, as required.

> *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 Director held that the Petitioner met this criterion. Upon further review, we conclude that this has not been established. In the initial filing, the Petitioner asserted that he met this criterion through his role at [redacted] in [redacted] The record contains a letter from [redacted], a partner for [redacted] indicating that the Petitioner reviews the work of his subordinates there as well as work done by professionals working with the company in finalizing transactions. The record also contains a redacted employee's performance review that the Petitioner conducted and a letter from [redacted] partner in the Corporate Finance Mergers and Acquisitions Advisory Practice for [redacted]

stating that the Petitioner "not only reviews the work of his subordinates but also reviews the work of his peers, namely other managing directors." Here, the Petitioner has not established that reviewing the work of his subordinates and co-workers represents his participation as a judge of the work of others. The record does not describe the nature of the Petitioner's review of his peers' work in sufficient detail to determine if such action satisfies the regulatory requirements. Furthermore, he has not established that this criterion should be read so broadly as to include his supervisory role in overseeing employees and their work within an organization. Thus, the Petitioner has not established that his role in evaluating the work of his subordinates and other professionals meets the requirements of this criterion.

In another aspect of the Petitioner's work, [redacted] states that the Petitioner "constantly reviews and evaluates valuation models, financial analysis and client presentations prepared by other executives on the deal." However, the Petitioner has not established how his work in evaluating these items amounts to his participation as a judge of the work of others. The record reflects that these are internal responsibilities that are consistent with his position at [redacted] as a senior investment banking associate. Specifically, [redacted] states that the Petitioner's main focus of his analysis and reviews include "client investment highlights and industry positioning," "cash flow analysis," "risk tiering," "allocating purchase price over client's assets," determining "optimal deal terms and pricing," conducting diligence in triangulating data and validating business and owner identity, and assessing the "impact on existing client employees and creation of additional jobs." The Petitioner has not provided evidence to establish that this analysis constitutes his participation as a judge of the work of others. Therefore, the Petitioner 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. The contributions must have already been realized, rather than being prospective possibilities. They must be original and scientific, scholarly, artistic, athletic, or business-related in nature. Finally, the contributions must 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 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 Director held that the Petitioner had not established that he met this criterion, noting that the evidence in the record indicated that he was involved in large financial transactions, but that he had not demonstrated that the methods he utilized were particularly novel or that they had been widely adopted in the field.

On appeal, the Petitioner claims that he meets this criterion due to his "major role in monumental deals including the $30 billion merger between the [redacted] Group LLP and [redacted] AG," for his work in advising the UK government as part of the "[redacted]" and for his contributions in the "initial public offering (IPO) of [redacted]."

To establish eligibility under this criterion, the Petitioner has submitted a number of letters as evidence, but for the reasons discussed below, they fail to identify his original contributions or the significance of their impact on the field.[1]

First, the Petitioner must establish that he has made original contributions. The Petitioner cites a letter from [redacted] senior managing principal of the investment banking division at [redacted] discussing the Petitioner's role at [redacted] as the lead advisor on the [redacted] Group merger. [redacted] states that the Petitioner created "common risk management and default framework for market utilities," performed "due diligence and financial feasibility studies," and "stock analysis and franchise valuation." He asserts that "[the Petitioner's] work was clearly original." Similarly, [redacted] the head of banking and capital markets for [redacted] in [redacted] discusses the Petitioner's work while employed at [redacted] in developing a broad strategy for the UK financial services sector due to the effects of a financial crisis. He states, "[c]learly, the industry sees [the Petitioner's] strategy as original." However, these letters lack sufficient detail regarding the Petitioner's contributions to determine their originality. Although both authors claim the Petitioner's contributions to be original, the record lacks corroborating evidence and we need not accept primarily conclusory statements. *See 1756, Inc. v. The U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.C. Dist. 1990). Thus, the Petitioner has not established that he has made original contributions.

Second, if the Petitioner had shown that he had made original contributions, he must also establish that they were "of major significance in the field." *See Visinscaia,* 4 F. Supp. 3d at 134. In discussing the Petitioner's role with the [redacted] Group merger, [redacted] states that "[his] work was . . . significant in that this transaction was an enormous undertaking that merged two independent institutions into one to create a global leader in the field . . . ." The Petitioner has not explained how the size of this merger is an indication of his impact in the field, and the record does not reflect that his contributions have widely influenced the field. The Petitioner also asserts that the media attention to this deal demonstrates that he meets this criterion, but he has not identified what media coverage he refers to. While the record contains an article from *The Guardian* and one from *The Economist* about this merger, they do not mention the Petitioner and he has not otherwise explained how his role in this merger impacted the field to constitute a contribution of major significance. In addition, although [redacted] states that this work paved the way for a potential merger "with the American clearing house ICE," the Petitioner's contributions must have already been realized, rather than being prospective possibilities.

The Petitioner asserts that his work advising the UK government while at [redacted] for the [redacted] Strategy Advisory represents a contribution of major significance. In a letter from [redacted] managing director of the investment banking division at [redacted] Partners in New York, he states, "[t]he [redacted] was a corporation set up by the UK government for the purpose of managing the UK Treasury's shareholdings in various banks that subscribed to its capitalization fund." [redacted] asserts that it is his understanding that the Petitioner was responsible for "providing [redacted] with recommendations for how best to manage the government's shares in both the [redacted] and [redacted]." He then indicates, "[t]his was

[1] While we do not cite to each letter in support of the petition, we have considered all of them. *See Noroozi v. Napolitano*, 905 F. Supp. 2d 535, 544 (S.D.N.Y. 2012) (*citing Chen v. U.S. Dep't of Justice*, 471 F.3d 315, 338 n. 17 (2d Cir. 2006)).

an incredibly important role during this project because [the Petitioner] was in charge of aiding the government to act in a way that promoted competition in the UK financial industry that benefitted consumers." [redacted] notes that this project "was also a success because it was the final major piece of the UK financial reform agenda that ensured banks would have sufficient loss-absorbing capacity to counter any future economic recessions." While letters from experts that articulate the specifics of a petitioner's contributions and their impact on the field may add value, letters that lack specific and simply use hyperbolic language do not add value and are not considered to be probative evidence that may form the basis for meeting this criterion.[2] Here, [redacted] does not identify the specific contributions made by the Petitioner nor explained how his individual work on this project influenced the field. As such, the Petitioner has not demonstrated his work on [redacted] while [redacted] to constitutes original contributions of major significance.

The Petitioner also asserts that his role in the IPO of [redacted] equates to a contribution of major significance in the field. The Petitioner quotes [redacted] as stating, "[t]hanks in large part to the tremendous value of the transaction that [the Petitioner] was able to secure on behalf of the client, it was just announced this summer that [redacted] made the Forbes Fortune 500 list of most valuable companies." Here, the Petitioner has not provided evidence demonstrating that his work on the IPO has impacted the field in a manner consistent with this criterion. *See Visinscaia,* 4 F. Supp. 3d at 134 (upholding the conclusion that the term "contributions of major significance" connotes that the Petitioner's work has significantly impacted the field). Therefore, the Petitioner has not established that he meets this criterion.[3]

> *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.[4] 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.[5]

The Director held that the evidence in the record demonstrated that the Petitioner was involved in large projects for his employers but that this did not establish a leading or critical role to these organizations

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[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* 8-9 (Dec. 22, 2010), https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/i-140-evidence-pm-6002-005-1.pdf

[3] The record contains a letter from [redacted], managing director, head of [redacted] stating that the Petitioner was a key member of the team that advised [redacted] in its acquisition of [redacted] He states that deal became well-known in the field and this strategy has influenced several other banks in the industry. Counsel for the Petitioner does not raise this on appeal, and the evidence in the record does not substantiate this claim. While the record contains an article from the *Los Angeles Times* and another from an *SNL Financial* blog about this transaction, these publications do not discuss the role of the Petitioner or his team, and the record does not contain additional evidence demonstrating that his strategy influenced other banks in the industry.

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

[5] *Id.*

as a whole. On appeal, the Petitioner asserts that he has performed a leading or critical role for [redacted] and [redacted].

The Petitioner submits a letter from [redacted], a partner in the financial services advisory practice at [redacted], which discusses the Petitioner's work on the "[redacted]" noting that [redacted] is the [redacted] largest bank in the world and the [redacted] largest bank in Europe. He indicates that in 2015, [redacted] announced "a radical restructuring effort in order to restore [its] reputation and profitability in the wake of the 2008 financial collapse." He explains that as part of this restructuring, [redacted] "decided to divest their entire [redacted] business as part of a wider strategy of business prioritization." [redacted] adds that the Petitioner "possessed the skills and experience necessary to facilitate the divestiture" and "was placed in the role of Lead Advisor for [redacted] to work with [redacted] during the divestiture." [redacted] indicates, "[d]uring the course of the project, [the Petitioner] was solely responsible for creating the strategy, operation, and implementation plan for the divestiture, which was valued at over £2.4 billion, as well as analyzing the options for the divestiture and what impact the divestiture would have on [redacted]s remaining assets." Here, we find that the Petitioner has established that his role as the lead advisor in the divestiture of this size represents a leading or critical role for [redacted] an organization with a distinguished reputation.

Similarly, [redacted] further discusses the Petitioner's role as "the Lead Associate for the [redacted] Strategy Advisory team at [redacted]." He states that he worked closely with the Petitioner in a project that was "extremely critical for the overall recovery and direction of the UK financial services industry," noting that it was "the first time an organization like [redacted] was formed to tackle . . . the repercussions of the financial crisis." He indicates that [redacted] "relied upon [the Petitioner's] recommendations to advise [redacted] Treasury for returning big UK banks to private ownership, realizing value for the taxpayer and executing the chosen strategy suggested by the Petitioner's team for realizing value for the Government's ownership stakes in an orderly and active way over time." We find that that the Petitioner's actions as the lead associate for this advisory team represent a leading or critical role for [redacted] an organization with a distinguished reputation. Accordingly, the Petitioner has established that he meets 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 record contains evidence of the Petitioner's salary at [redacted], including a statement of his compensation for 2015 and a letter from the Human Resources Service Delivery Manager, stating his salary and the equivalent for the same position in the United States. The record contains documentation from PayScale, which states the salary for the top ten percent of those in positions as mid-career investment bankers in the United States. As the Petitioner's equivalent U.S. salary exceeds this amount, he has established by the preponderance of the evidence that he has commanded a high salary in relation to others in the field. Therefore, he has established that he meets 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. 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 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 N-M-*, ID# 2525207 (AAO May 17, 2019)