U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF N- INC.

DATE: SEPT. 10, 2019

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, PETITION FOR ALIEN WORKER

The Petitioner, a clinical research organization, seeks to classify the Beneficiary, its data management director, as an individual of extraordinary ability in business. *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 Texas Service Center denied the Form I-140, Immigrant Petition for Alien Worker, concluding that the Beneficiary had satisfied only two of the ten initial evidentiary criteria, of which he must meet at least three.

On appeal, the Petitioner submits a brief and additional evidence and asserts that the Beneficiary meets at least three of the ten criteria and is eligible for the benefit sought.

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

I. LAW

Section 203(b)(1)(A) of the Act makes visas available to immigrants with extraordinary ability if:

> (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
>
> (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
>
> (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth two options for satisfying this classification's initial evidence requirements. First, a petitioner can demonstrate a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then he or she must provide documentation that meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles). The regulation at 8 C.F.R. § 204.5(h)(4) allows a petitioner to submit comparable material if he or she is able to demonstrate that the standards at 8 C.F.R. § 204.5(h)(3)(i)-(x) do not readily apply to the individual's occupation.

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011). This two-step analysis is consistent with our holding that the "truth is to be determined not by the quantity of evidence alone but by its quality," as well as the principle that we examine "each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true." *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

II. ANALYSIS

As noted above, the Petitioner employs the Beneficiary as its data management director. Because the Petitioner has not indicated or established that the Beneficiary 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).

A. Regulatory Criteria

In denying the petition, the Director found that the Beneficiary met two of the initial evidentiary criteria: leading or critical role at 8 C.F.R. § 204.5(h)(3)(viii) and high salary at 8 C.F.R. § 204.5(h)(3)(ix). The record contains letters of recommendation demonstrating that the Beneficiary has served in a qualifying role for a previous employer as well as documentation establishing this entity's distinguished reputation. The record also includes evidence that the Beneficiary commands a high salary in relation to others in the field. Accordingly, we agree with the Director that he meets both the critical or leading role and high salary criteria.

On appeal, the Petitioner maintains that the Beneficiary meets one additional criterion, discussed below. We have reviewed all of the evidence in the record and conclude that it does not support a finding that the Beneficiary satisfies the requirements of at least three 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).

In his decision, the Director determined that the Beneficiary did not meet this criterion. Specifically, he concluded that while the record reflected that the Beneficiary had "contributed to the success of his employers," it did not establish that his contributions met the requirements of the criterion. In order to satisfy the regulation at 8 C.F.R. § 204.5(h)(3)(v), a petitioner must establish that not only has the beneficiary made original contributions but that they have been of major significance in the field. For example, a petitioner may show that the contributions have been widely implemented throughout the field, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance in the field.

On appeal, the Petitioner submits a letter from [redacted] former senior vice president at [redacted] describing [redacted] purchase of a software product from [redacted] a document titled [redacted] and design specifications which the Petitioner explains were created by the Beneficiary. It also provides a list of data management professionals which it indicates were trained by the Beneficiary and a list of financial figures for companies in the industry that now employ his trainees. The Petitioner contends that this evidence, considered with the letters of recommendation it provided previously, establishes that the Beneficiary meets this criterion.[1]

Upon a review of the record in its entirety, we do not find that it supports such a finding. Regarding [redacted] letter and the accompanying technical documentation, the Petitioner states that these materials document the Beneficiary's contributions. It asserts that [redacted] letter clearly describes [redacted] acquisition of a software platform developed by the Beneficiary. However, while [redacted] clearly describes [redacted] acquisition of the right to use the [redacted] software solution from [redacted] he does not attribute the development of this solution to the Beneficiary. Similarly, while the [redacted] includes "details on the development, testing, debugging and compliance" for that project, it lacks information establishing the Beneficiary's role in this plan.[2] The technical specifications refer to [redacted] modules, but again do not contain information demonstrating the Beneficiary's contribution to the software. Further, even if the record demonstrated that the referenced software constituted an original contribution by the Beneficiary, the submitted materials do not support a finding that this contribution has risen to the level of major significance in the field, as required. *See* 8 C.F.R. § 204.5(h)(3)(v).

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[1] The Petitioner also opines that the Director erred in his decision by imposing a "novel substantive requirement" in requiring "major contributions to the field" rather than "in the field" and because "the regulations do not require a significant important contribution related to the entire field." (Emphasis in original). However, we do not find support for the Petitioner's contention regarding the difference in meaning between these phrases and we note that USCIS policy advises adjudicators to "determine whether the alien's original contributions are of major significance to 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* 6 (Dec. 22, 2010), https://www.uscis.gov/policymanual/HTML/PolicyManual.html. We therefore conclude that the Director did not err in his decision.

[2] The document attributes authorship to [redacted] and indicates that it was approved by [redacted]

Regarding the additional letters of recommendation in the record, while they identify several of the Beneficiary's original contributions in the field of clinical data management, they generally discuss how this work affected employers rather than the field as a whole.[3] For example, [redacted] director of [redacted] attributes that entity's successful development of solutions for the industry to the Beneficiary's support and states that "[the Beneficiary] possesses abilities ... which have been critical to the companies he has worked with." [redacted] a research consultant for whom the Beneficiary worked at [redacted], notes that the Beneficiary "made key original contributions towards winning business for the company" including "creat[ing] new databases, new formats of data collections, electronic sources; design[ing] report formats, entry methods, error control; and generat[ing] output reports, lists, figures, and tables." The letters, however, do not sufficiently illustrate how the Beneficiary's contributions to these companies have influenced or held importance for the field of clinical data management such that they rise to the level of "a contribution of major significance." The language of this regulatory criterion requires that the Petitioner's original contributions be "of major significance in the field" rather than mainly affecting his employer. *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 corroborate her impact in the field as a whole).

Finally, as noted above, the Petitioner provides a list of employees that it asserts were trained by the Beneficiary while working for Accenture and "now occupy executive leadership positions in the data management departments of some of the foremost companies across the industry."[4] It argues that this demonstrates his "significant business-related contributions to the field of clinical data management." However, the Petitioner does not provide letters or other materials corroborating its assertions or explaining how the Beneficiary's training of these individuals constitutes an original contribution in or has otherwise impacted the field of clinical data management. Accordingly it has not demonstrated that the Beneficiary's contributions as a trainer rises to the level of major significance in the field of clinical data management, as required pursuant to 8 C.F.R. § 204.5(h)(3)(v). For the reasons discussed above, we do not find that the Petitioner has established that the Beneficiary meets this criterion.

B. O-1 Nonimmigrant Status

We note that the record reflects that the Beneficiary received O-1 status, a classification reserved for nonimmigrants of extraordinary ability. Although USCIS has approved at least one O-1 nonimmigrant visa petition filed on behalf of the Beneficiary, the prior approval does not preclude USCIS from denying an immigrant visa petition which is adjudicated based on a different standard – statute, regulations, and case law. Many Form I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990). Furthermore, our authority over the USCIS service centers, the office adjudicating the nonimmigrant visa petition, is comparable to the relationship between a court of appeals and a district court. Even if a service center director has approved a nonimmigrant petition on behalf of an individual, we are not bound to follow

[3] We have reviewed all of the letters in the record, but discuss only a sample here.

[4] The Petitioner provides an untitled, undated document listing revenues for each of these companies to demonstrate their prominence in the industry.

that finding in the adjudication of another immigration petition. *Louisiana Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, at *2 (E.D. La. 2000).

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 Beneficiary has established the acclaim and recognition required for the classification sought.

The Beneficiary seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than those progressing toward the top. USCIS has long held that even athletes performing at the major league level do not automatically meet the statutory standards for classification as an individual of "extraordinary ability." *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994). While the Petitioner need not establish that there is no one more accomplished to qualify for the classification sought, we find the record insufficient to demonstrate that the Beneficiary has sustained national or international acclaim and is among the small percentage at the top of his field. *See* section 203(b)(1)(A)(i) of the Act and 8 C.F.R. § 204.5(h)(2).

For the reasons discussed above, the Petitioner has not established the Beneficiary's eligibility for the classification sought. 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 N- Inc.*, ID# 3997325 (AAO Sept. 10, 2019)