U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF V-, INC.

DATE: SEPT. 11, 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, an energy and power company, seeks to classify the Beneficiary 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 although the Beneficiary satisfied three of the initial evidentiary criteria, in which he must meet at least three, the Petitioner did not show his sustained national or international acclaim and demonstrate that he 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 meets an additional criterion and has sustained the required acclaim and has risen to the very top of his 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,
>
> (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

The Petitioner employs the Beneficiary as a senior vice president of marketing and solution/product management in [redacted] California. Because it 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). In denying the petition, the Director found that the Beneficiary fulfilled three of the initial evidentiary criteria, 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 scholarly articles in professional publications and performed in a leading or critical role for an organization with a distinguished reputation. Accordingly, we agree with the Director's determination regarding the scholarly articles and leading or critical role criteria. However, for the reasons discussed later, we do not concur with the Director's finding as it relates to the high salary criterion.

On appeal, the Petitioner maintains that the Beneficiary meets an 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).

The Petitioner contends that the Beneficiary "is a pioneer within smart grid and automation deployment who has changed the way the energy industry approaches electric power systems and; [sic] management of transmission and distribution grids" and references his patent, recommendation letters, citatory history, and business side of energy management. 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 a 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.

As it relates to the patent, the Petitioner provided evidence that the Beneficiary received a patent for "[redacted]" in 2010. 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. Moreover, the Petitioner provided recommendation letters mentioning the Beneficiary's patent but do not further elaborate or discuss the significance of the patent in the field. For instance, the letters stated that the beneficiary "owns a patent on [redacted] ([redacted]) and "has a patent protecting his work" ([redacted]).[2] Although the authors confirmed the Beneficiary's receipt of a patent, they did not explain how it has significantly impacted or influenced the field.[3]

Moreover, the Petitioner claims that the Beneficiary "has led the development of [redacted] relays" Further, the Petitioner asserts that the Beneficiary's "essential work on this [redacted] relay has transformed the global power systems industry." Although the Petitioner stresses the importance of [redacted] the record reflects that only two of his recommendation letters referenced it. For example, [redacted] indicated that the Beneficiary's "work on this relay transformed the power systems industry across the globe" and "has been one of the [redacted] relays worldwide." Further, [redacted] stated that the [redacted] relay that completely transformed the industry by vastly increasing the security, power, and dependability it gave electric engineers" and "revolutionized [his] work on [redacted] power systems and on improving [redacted] utilization." However, the authors did not include specific information or detail how [redacted] has "transformed" the overall field rather than broad, unsupported statements.

Furthermore, the Petitioner argues that the Beneficiary "was also instrumental in the development and deployment of the international standard for [redacted]." The Petitioner

[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).

[2] Although we discuss a sampling of letters, we have reviewed and considered each letter contained in the record.

[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).

submitted the "Applications of [redacted] Standard to Protection Schemes" (June 2013), as well as a screenshot from [redacted] (June 2015) reflecting that the [redacted] standard "has been available for more than ten years and has created an environment that allows significant improvements in the protection, automation and control systems." Although the Petitioner documented the Beneficiary's involvement in a study committee to develop standards for [redacted] it did not demonstrate that the guidelines have been majorly significant in the field. Moreover, the recommendation letters mention the Beneficiary's involvement with the study committee and document without providing detailed information showing how the guidelines have significantly influenced or impacted the field in a major way. For instance, "[the Beneficiary] was the Convener of the [redacted] Working Group related to the Applications for Protection Scheme based on [redacted] an international standard for electric power systems design and architecture" [redacted], "he created novel solutions for networks of substations based on the new [redacted] standard [redacted]), and "he has authored technical guides for . . . the [redacted] Study Committee." While the letters confirm his role and involvement with the study committee, they do not show how the technical guide has been of major significance in the field.

As discussed above, 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 an individual's contributions are of major significance to the field and its impact on subsequent work add value.[4] 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.[5] 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).

In addition, the Petitioner contends that the Beneficiary's written work has garnered 110 citations. As it relates to the cumulative citations, this criterion requires the Petitioner to establish that the Beneficiary has made original contributions of major significance in the field. Thus, the burden is on the Petitioner to identify the Beneficiary's original contributions and explain why they are of major significance. Here, the Petitioner did not demonstrate how the Beneficiary's cumulative number of citations pinpoints to which authored articles or findings represents contributions of major significance in the field. Moreover, aggregate citation figures are reflective on an individual's overall publication record rather than isolating which research the field considers to be majorly significant. Publications and presentations are not sufficient under 8 C.F.R. § 204.5(h)(3)(v) absent evidence that they were of "major significance." *See Kazarian v. USCIS,* 580 F.3d 1030, 1036 (9th Cir. 2009), *aff'd in part,* 596 F.3d 1115.

In the case here, a review of the citation record to his individual articles is a more appropriate analysis.[6] The Petitioner provided evidence showing that the Beneficiary's four highest cited articles received

[4] *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8-9.

[5] *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).

[6] *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

33, 33, 27, and 26 citations, respectively.[7] However, the Petitioner did not articulate the significance or relevance of these numbers. For example, the Petitioner did not demonstrate that these citations are unusually high in the Beneficiary's field or how they compare to other articles that the field views as having been majorly significant. Although the Beneficiary's citations are indicative that his research has received attention from the field, the Petitioner did not establish that the citation numbers to his individual articles rise to the level of "major significance" consistent with this regulatory criterion. Here, the Petitioner did not sufficiently identify the specific contributions the Beneficiary has made through his written work, nor has it shown that his citations for any of his published articles are commensurate with contributions of major significance.

Finally, the Petitioner argues that the Beneficiary "has performed exceptionally well on the business side of energy management," such as managing budgets, regaining lost market shares, and increasing sales. As discussed earlier, we found that the Beneficiary performed in a leading or critical role 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 Petitioner's recommendation letters reflect that the Beneficiary contributed to his companies' activities, the Petitioner did not show the unusual influence or great impact in the overall field beyond his 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.

> *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).

As indicated earlier, the Director found that the Petitioner established that Beneficiary's eligibility for this criterion. In order to meet this criterion, a petitioner must demonstrate that the Beneficiary's salary or remuneration is high relative to the compensation paid to others working in the field.[8] For the reasons outlined below, the record does not reflect that the Petitioner provided sufficient documentary evidence showing that the Beneficiary fulfills this criterion, and the Director's determination on this issue will be withdrawn.

The Petitioner indicated that it employs the Beneficiary as a "Senior Vice President, Marketing & Solution/Product Management." In addition, the Petitioner submitted copies of the Beneficiary's paystubs. However, the Petitioner provided occupational employment statistics and wage data from bls.gov and flcdatacenter.com for "Marketing Managers." Although the Petitioner likens the Beneficiary's salary to the wages of marketing managers, it did not show that the Beneficiary commands a high salary "in relation to others in the field," such as senior vice presidents. *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

be probative of the significance of the person's contributions to the field of endeavor).

[7] The Petitioner's remaining articles received 7 citations or less.

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

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 did not demonstrate that the Beneficiary earned a high salary compared to other senior vice presidents in his field.

Because the Petitioner did not establish that the Beneficiary satisfies this criterion, we withdraw the decision 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 Beneficiary has established the 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. *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 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 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 V-, Inc.*, ID# 4194498 (AAO Sept. 11, 2019)