U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 6525920

Date: APR. 23, 2020

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Extraordinary Ability)

The Petitioner, a software engineer, seeks classification as an alien 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 petition, concluding that the record did not establish that the Petitioner had satisfied at least three of ten initial evidentiary criteria, as required. The matter is now before us on appeal.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon de novo review, we will dismiss the appeal.

## I. LAW

Section 203(b)(1)(A) of the Act makes immigrant visas available to aliens 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 a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the recognition of their achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then they must provide sufficient qualifying 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).

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).

## II. ANALYSIS

The Petitioner previously founded [redacted] a media consultancy company, and [redacted] a wiki-style website focused on travel. He co-founded [redacted] served as its chief executive officer, and co-created its namesake platform, described as "[redacted]" He now works as a software engineer at [redacted]

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). The Petitioner claims to have met six criteria, summarized below:

- (i), Lesser nationally or internationally recognized prizes or awards;
- (iii), Published material about the alien in professional or major media;
- (v), Original contributions of major significance;
- (vi), Authorship of scholarly articles;
- (viii), Leading or critical role for distinguished organizations or establishments; and
- (ix), High remuneration for services.

The Director found that the Petitioner met one of the evidentiary criteria, relating to a leading or critical role for distinguished organizations or establishments. On appeal, the Petitioner asserts that he also meets the five other claimed evidentiary criteria. After reviewing all of the evidence in the record, we find that the Petitioner has satisfied one further 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)

An official of [redacted] states that the Petitioner "is paid a base annual salary of $230,000 plus a bonus target of 20% . . . and . . . is among the highest paid software engineer[s] at the company evidencing his prominence in the field." A printout from the Bureau of Labor Statistics shows that the 90th percentile annual salary for "software developers, applications" in the United States is $160,100. The Online Wage Library of the Foreign Labor Certification Data Center indicated that the level 4 wage for fully competent software developers in the New York metropolitan area is $117,624 per year.

In the denial notice, the Director did not specify how the submitted evidence was deficient. The Director stated: "Average salary information for those performing work in a related but distinct occupation with different responsibilities is not a proper basis for comparison." This is a true statement, but the Director did not explain how it applies to the case at hand. Upon review, we agree with the Petitioner that he provided sufficient evidence of his high salary in relation to others in the field, including sources provided in USCIS's own Adjudicator's Field Manual. Those sources consist of websites operated or sponsored by the U.S. Department of Labor, including the examples cited above. We conclude that the Petitioner has satisfied this criterion.

However, after reviewing the evidence of record, we conclude, for the following reasons, that the Petitioner has not satisfied the other claimed 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)

The Petitioner was a co-creator of the [redacted] which won the [redacted] Award 2012 from the [redacted], and the [redacted] Award from [redacted].

The Petitioner was not named as a recipient of either award, and the record does not show that either is nationally or internationally recognized. The information in the record about the awards is all from the respective awarding entities, either from the entities' own websites or from published press releases originating from the entities.

Regarding [redacted]'s award, the Petitioner asserts: "Press in attendance have included USA Today [and the] New York Times." The record does not show that either of those publications reported the prize winners. Their claimed presence or participation is not evidence of the recognition of a particular prize.

Likewise, an article referring to [redacted] as the "world's largest [redacted]" does not establish recognition of awards from the event. Other than press releases and related promotional materials, the submitted articles about [redacted] do not mention prizes or awards.

The Petitioner also contends that venture capital funding from [redacted] is a qualifying award. In the denial notice, the Director stated: "the raising of venture capital does not qualify as a[n] internationally recognized prize or award. Rather it is a business necessity for entrepreneurial start-up companies." On appeal, the Petitioner asserts that not every new business receives venture capital, and therefore it is not a "business necessity." An official of [redacted], which provided the venture capital for the Petitioner's company, states that the company invested in the Petitioner's startup "based on the quality of the intellectual property and leadership of [the Petitioner] personally."

The Petitioner cites guidance from the website of U.S. Citizenship and Immigration Services (USCIS), indicating that a petitioner may submit evidence of "venture capital funding" as evidence of a nationally or internationally recognized prize or award. The printout submitted to support this assertion is not directly from USCIS' website, but rather a privately archived copy of the page from 2015. The Petitioner

has not established that this information is binding in this proceeding, or that the guidance was in effect in any form when the Petitioner filed the petition in 2019.

Furthermore, assuming that venture capital could be considered a prize or award, this would not mean that any and all venture capital, from whatever source, is a nationally or internationally recognized prize or award. The Petitioner has not specifically shown that venture capital from [redacted] is nationally or internationally recognized.

The Petitioner has not satisfied this criterion.[1]

> Published material about the alien in professional or major trade publications or other *major media, relating to the alien's work in the field for which classification is sought.* Such evidence shall include the title, date, and author of the material, and any necessary translation. 8 C.F.R. § 204.5(h)(3)(iii)

The Petitioner submitted printouts from various online publications. The Director stated that, for various reasons, online publications are "less probative than documents published by a publishing house or major news organization." On appeal, the Petitioner asserts that the Director cited no valid ground for discounting online publications. The Petitioner maintains that "he has been featured in major trade publications and major media regarded as the top sources for the field – not 'blogs' that have 'little probative value.'" (Elsewhere in the appellate brief, the Petitioner asserts that several of the publications are ranked on lists of the "best tech blogs.")

While the Director may not have given sufficient weight to online-only publications, we need not decide the question of whether the specific sites constitute qualifying media, because the materials submitted are not about the Petitioner relating to his work in the field.

Various online publications ran articles about [redacted] to report its founding and later rounds of capitalization. The articles identify the Petitioner as a co-founder of [redacted] but did not emphasize him or his work. One article published in Gigaom quoted the Petitioner about data mining and mobile platforms; an article in TechCrunch quoted the Petitioner regarding the [redacted] app's use of geotagged photographs to identify likely places of interest.

Earlier articles focused on a now-defunct collaboration platform called [redacted]. The articles quoted from blog posts by the Petitioner, identified as a tech lead in 2009 and as a software engineer in 2010. The Petitioner's comments concerned [redacted] features without identifying his specific work on the project.

The Petitioner has not satisfied this criterion.

[1] Apart from the awards discussed above, the Petitioner initially asserted that he "has been personally awarded with 8 US patents." The record documents these patents, but patents are not prizes or awards for excellence in the field. The Petitioner does not pursue this particular claim on appeal.

*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 order to satisfy this criterion, petitioners must establish that not only have they made original contributions, but also that those contributions 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. The phrase "major significance" is not superfluous and, thus, it has some meaning. See Silverman v. Eastrich Multiple Investor Fund, L.P., 51 F. 3d 28, 31 (3rd Cir. 1995) quoted in APWU v. Potter, 343 F.3d 619, 626 (2nd Cir. Sep 15, 2003).

Letters from individuals who have had varying degrees of contact with the Petitioner, including several who have invested in his companies, include descriptions of his various past endeavors. For example, a former [redacted] employee, who is now a partner at a venture capital firm, stated that the Petitioner created authorship ranking, which allows [redacted] search engine to rank original content ahead of sites that copy or quote that content. The Petitioner is named on patents relating to this technology.

As another example, an entrepreneur who has "had several fruitful discussions" with the Petitioner states that the Petitioner "launched [redacted] the first commercial and public wiki," which allowed users to contribute to "a worldwide travel guide that was never out of date." [redacted] included "[a] hierarchical database" and a "way of collecting user generated content [that] has been widely followed – [redacted] predates Wikipedia by two years – and has had a huge impact on the industry." The same individual asserts:

> [T]he superior technology behind [redacted] developed by [the Petitioner] is also highly innovative and has significantly influenced the field. By using algorithms that improve upon the state of the art in Machine Learning and Big Data, [redacted] is able to turn an unsupervised web crawl into a consumer ready travel guide, without any human editing. . . . [The Petitioner's] contributions to the field of Big Data and Machine Learning are widely recognized and lauded.

The Petitioner states that the letters are from "industry leaders who have testified that [the Petitioner's] work is considered important in the field and that his work is being implemented by others," but the record does not sufficiently document that implementation. The record includes background materials about the writers of the letters, but little documentary evidence to provide context to the contributions attributed to the Petitioner. For example, the record contains copies of patents in the Petitioner's name, and information about citation to those patents, but the Petitioner has not objectively shown that this level of citation demonstrates major significance.

Regarding an instructional book that the Petitioner wrote, a former colleague at [redacted] stated: "the importance of [the Petitioner's] book . . . is better assessed by the number of stars on the accompanying git repository and the fact that it has been translated into multiple languages rather than the number of citations." The record does not include the book's git repository (or provide explanatory context), nor does the record establish the circumstances and criteria underlying the decision to translate the Petitioner's book. The existence of translations is not presumptive evidence of major significance.

The Director acknowledged the submitted letters, but stated that, by themselves, such letters are not dispositive evidence of qualifying contributions. They must be weighed against the objective evidence in the record. The Director also stated that patents are evidence of originality, but not of significance.

On appeal, the Petitioner quotes from the submitted letters and contends that "[i]t is widely confirmed by experts across the field that [the Petitioner's] contributions are of major significance in the field, no reasoning was offered by the Director in rejecting this evidence." While the Director did not discuss the letters in detail, we agree with the Director that the record lacks "preexisting, independent, and corroborating evidence" to support the assertions in the submitted letters. Letters can provide context and clarify the nature of an individual's specific contributions to a given project, but they cannot take the place of documentary evidence with respect to claims of demonstrable fact. For example, a letter saying that a given type of technology is "widely used" is general and vague, lacking key information about who is using it and how that use has been of significant benefit to the field. Such statements cannot satisfy the statutory requirement for "extensive documentation" at section 203(b)(1)(A)(i) of the Act.

> *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)

The Petitioner wrote an instructional book on deep learning and contributed chapters to two books.[2] The Director stated that the Petitioner had not shown that "the authored works were published in professional publications, trade publications, or other major media."

On appeal, the Petitioner states that '[redacted]' [sic] "is a major trade publication." [redacted] (which published two of the books in question) is a publisher, not a publication. A particular book may qualify as a major trade publication, but this status is contingent on the reception of the book rather than the status of its publisher. The reputation of a given publisher does not necessarily correspond to whether individual publications produced by that publisher are major or minor.

Because the denial mentions only "a book published by the petitioner," the Petitioner protests that the Director disregarded the Beneficiary's book chapters. The Petitioner, however, cites no evidence on appeal to support the claim that the books in question are professional or major trade publications or other major media. Instead, as above, the Petitioner discusses the publishing companies that issued the books. Accordingly, we conclude that the submitted evidence does not satisfy 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

[2] The Petitioner notes that one of these books has 107 citations on Google Scholar, but the Petitioner does not show how many of these citations pertain to the chapter he wrote in that book.

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 Petitioner seeks a highly restrictive visa classification, 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. Matter of Price, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994). Here, the Petitioner has not shown that the significance of his 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 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 and 8 C.F.R. § 204.5(h)(2).

For the reasons discussed above, the Petitioner has not demonstrated his eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.