U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 10064636

Date: AUG. 25, 2020

Appeal of Texas Service Center Decision

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

The Petitioner, a business executive, 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 Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner met the initial evidence requirements for the requested classification by demonstrating his receipt of a major, internationally recognized award or meeting at least three of the ten criteria at 8 C.F.R. 204.5(h)(3).

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. See 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) 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 a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the recognition of his or her 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 he or she 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) (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 states that his field of expertise is engineering innovations and business development of industrial and defense equipment through international sales and marketing. He indicates that he intends to work in the same field in the United States, and possibly obtain contracts to manufacture and sell equipment to the United States Army. The record shows that he has held sales and executive positions with several companies over the past 40 years.

A. Evidentiary Criteria

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 Director found that the Petitioner did not meet any of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). On appeal, the Petitioner does not specifically claim to have met any of the criteria, but challenges the Director's analysis of evidence submitted in support of several criteria. After reviewing all of the evidence in the record, we find that the Petitioner does not meet the initial evidence requirement through satisfaction of at least three 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 submitted a document titled "Certificate Accreditation of Engineering Excellence," which states that it was issued by "Government of Pakistan, Ministry of Defepence [sic] Production, Directorate General Munitions Production" to [redacted]. The certificate states that the company received the certificate "in recognition of their ability and experience and potential to handle state of the art projects…" and indicates that it was issued as an

annex to a letter from the same agency. That letter, which was added to the record with the Petitioner's response to the Director's request for evidence (RFE), is addressed to the Petitioner as the [redacted] and states that the certificate "is not valid for any matter pertaining to Ministry of Defence Production/Directorate General Munitions Production."

The Director found that this evidence did not meet this criterion for two reasons. First, he noted that the certificate was not issued to the Petitioner, but to [redacted] The plain language of this criterion states that documentation of the alien's receipt of prizes or awards must be submitted, not those received by his employer.[1] The Petitioner does not dispute this issue on appeal.

Second, the Director noted that the record does not include evidence showing that this certificate is a nationally or internationally recognized prize or award. The Petitioner asserted in responding to the Director's RFE that it "was first and is only to this date issued due to indigenously and intellectually non copy basis innovative design based defense equipment development of national and international significance." However, the record does not include evidence to support this assertion, or as the Director noted, any objective evidence concerning the criteria used by the Pakistan Ministry of Defense in issuing the certificate, or its recognition within the field of business.

On appeal, the Petitioner asserts that because the certificate was issued by the Pakistan Ministry of Defence Production "for work done of international significance," it should be considered nationally or internationally recognized. However, the fact that it was issued by an agency of the national government does not prove that the certificate is nationally recognized. The certificate was attached to a letter from the agency to the Petitioner's business, not publicly awarded or reported on, and the record does not show that any recognition went beyond those two parties, either to the national government as a whole or the broader defense industry in Pakistan or abroad. The Petitioner argues that an award is "given for doing something well," but that is insufficient to establish that such an award was given for excellence and recognized at the national or international level. Accordingly, we agree with the Director that the evidence does not establish that the Petitioner meets this criterion.

> 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)

As indicated by the Director in his decision, a petitioner must establish several elements in order to meet the plain language of this criterion. Material must be published, be about the petitioner, relate to their work, appear in one of the specified types of media, and include the listed information. In this case, the Petitioner relies on an advertisement which appeared in the [redacted] 1999 issue of Jane's Defence Weekly. On appeal, the Petitioner asserts that the Director erred in reviewing the article which appears on the same page above this advertisement, despite his clarification presented in responding to the RFE. While we agree that the Director analyzed the incorrect material, on review we do not find that the advertisement qualifies under this criterion. We acknowledge that the material

[1] See USCIS Policy Memorandum PM 602-0005.1, Evaluation of Evidence Submitted With Certain I-140 Petitions; Revisions to the Adjudicator's Field Manual (AFM) Chapter 22.2, AFM Update AD11-14. page 6 (Dec. 22, 2010), https://www.uscis.gov/policy-manual/volume-6-part-f.

was published, and take administrative notice that Jane's Defence Weekly is a major trade publication in the defense industry. However, the Petitioner is not mentioned in the caption below the photograph depicting his company's product, and the caption focuses only on the product.[2] This material is therefore not about him.

In addition, the Petitioner states that he took the photograph of his company's product and wrote the text of the caption, which is clearly written as an advertisement for the product, including [redacted]'s contact information, pricing for the product and a notice of dealership opportunities in the United States and United Kingdom. This criterion is not intended to consider either autobiographical material or advertisements, but published material written by others about an individual and their work. We note that a separate criterion at 8 C.F.R. § 204.5(h)(3)(vi) is intended for the consideration of scholarly articles authored by a petitioner. Further, the evidence does not indicate the author of this material as required.

For all of the reasons given above, we agree with the Director and find that the Petitioner does not meet this criterion.

> 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 specialization for which classification is sought. 8 C.F.R. § 204.5(h)(3)(iv)

Although the Petitioner does not specifically address this criterion on appeal, he asserts that the Director did not consider the content of job performance certificates he submitted together with the explanations of this evidence he provided in response to the RFE. In that response, he focused on two documents: an agreement between [redacted] and [redacted][3] which names the latter as the exclusive agent to sell certain [redacted] products in Pakistan, and a letter from [redacted] to the Petitioner as Chairman and CEO of a company called [redacted]

Regarding the first document, the Petitioner indicated that in carrying out this agreement, he "principally was judging the work of others (competitors) individually." However, he does not refer to any particular provision in the agreement which supports this assertion, nor does the record include evidence of specific instances in which the Petitioner participated as a judge of the work of individuals or groups in the field of business, or the specific field of international sales and marketing. As for the evidence relating to his position with [redacted] he indicated that "it was a routine matter to judge the work of others: people performing given most demanding jobs of reverse and innovative engineering." Again, the Petitioner did not provide documentary evidence to demonstrate specific instances of his participation as a judge of the work of others. Further, based only upon his statement that he judged the work of those performing "reverse and innovative engineering," he has not shown that he was judging the work of other sales and marketing executives. Accordingly, this evidence is insufficient to establish that he meets this criterion.

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[2] The copy of the relevant page initially submitted by the Petitioner did not include the full text of the caption, but we note that he has submitted a complete copy of the magazine in which it appeared on appeal.

[3] The name of the agent is given as [redacted] in this agreement, but the Petitioner indicates that this was later changed to [redacted] This name change is confirmed in the record by the award decision granted by the ICC International Court of Arbitration.

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)

"Contributions of major significance" connotes that the Petitioner's work has significantly impacted the field. See Visinscaia, 4 F. Supp. 3d at 134. 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.

As with the above criterion, the Petitioner does not specifically address the issues raised regarding this criterion in the Director's decision, but generally refers to evidence such as the job performance certificates. We note that in responding to the Director's RFE, the Petitioner identified specific evidence which he submitted in support of this criterion. The first of these was a document titled "Certificate of Business Relationship and Performance" which was attached to the letter from [redacted] discussed above. The letter states that the certificate is provided at the request of the Petitioner "to fulfill your needs." According to the certificate, [redacted] "is one of our few top firms contributing in country's indigenous defense needs," and in the 32 years prior to the date of the certificate "have developed above 350 units of parts, and assemblies in electrical and mechanical disciplines." It goes on to state that the company has "adequate machine shop facilities…" and 35 employees. However, the Petitioner does not articulate, either in the RFE response or on appeal, what impact he has had on the field of business by leading a company which has supplied parts and equipment to Pakistan's military.

The Petitioner also refers to the agency agreement with [redacted], and stated in his RFE response that the country had previously not sold products in Pakistan. He repeats this reference on appeal, and also submits a copy of his lawsuit against the company in the Islamabad High Court seeking damages of € 38 million. But the brief does not explain how either the Petitioner's sole agency contract, or the litigation resulting from that contract, are original contributions to the field of business or international sales and marketing, or that they have influenced the field in some way. Although he mentions several times that [redacted] had never sold equipment in Pakistan prior to this agreement, he does not suggest or show that any impact of the agreement went beyond the two parties involved to the broader field. We therefore find that the Petitioner does not meet this criterion.

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)

In order to meet this criterion, a petitioner must establish that they have authored an article that is scholarly in nature, and that the article has been published in one of the qualifying types of media. As defined in the academic arena, a scholarly article reports on original research, experimentation, or philosophical discourse. It is written by a researcher or expert in the field who is often affiliated with a college, university, or research institution. In general, it should have footnotes, endnotes, or a bibliography, and may include graphs, charts, videos, or pictures as illustrations of the concepts expressed in the article.

For other fields, a scholarly article should be written for learned persons in that field. ("Learned" is defined as "having or demonstrating profound knowledge or scholarship"). Learned persons include all persons having profound knowledge of a field.[4]

The Petitioner focuses on the previously discussed advertisement in Jane's Defence Weekly in support of his claim to this criterion as well. As noted in our previous discussion, although the Petitioner claims to have taken the photograph in the advertisement and written the accompanying text, the material does not include the author's name. In addition, the text of this advertisement does not indicate that it was written for learned persons in the field of business, or for those having profound knowledge in international sales and marketing. Rather, it briefly and plainly describes the features of [redacted]'s product in terms that do not require profound business knowledge to comprehend. Because the Petitioner has not established that he authored this advertisement, or that it is scholarly in nature, we find that he does not meet this criterion.

> 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)

To establish eligibility under this criterion, a petitioner must establish that they performed in either a leading or critical capacity, and that the organization or establishment for which they performed this role have a distinguished reputation. If a leading role, the evidence must establish that the alien is (or was) a leader. A title, with appropriate matching duties, can help to establish if a role is (or was), in fact, leading. If a critical role, the evidence must establish that the alien 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 alien's performance in the role is (or was) important in that way. It is not the title of the alien's role, but rather the alien's performance in the role that determines whether the role is (or was) critical.[5]

The Director found in his decision that the evidence of the Petitioner's work for four different companies did not establish that the role he played was either leading or critical. On appeal, the Petitioner addresses this issue regarding his role as a sole agent for [redacted] in Pakistan, noting that he served in this role for seven years and that this resulted in pending litigation in which he seeks € 38 million. Although the previously mentioned award decision issued by an arbitration court suggests that this arrangement was beneficial for both parties, the evidence does not indicate that the petitioner's role in the sale of [redacted] products was important to the overall success of the company. Further, the Petitioner has not explained how the evidence of his lawsuit against [redacted]'s successor demonstrates that he played a leading or critical role for the company.

Regarding his roles for other companies which the Petitioner asserts was critical, we agree with the Director that the evidence does not support this assertion. A certificate from [redacted] states that he worked as a sales executive with one of the company's authorized dealers, [redacted] in [redacted] Saudi Arabia. The certificate indicates that he sold many trucks, "demonstrated above average selling-skills," and had good moral character. It does not demonstrate that his role as

[4] See USCIS Policy Memorandum PM 602-0005.1, Evaluation of Evidence Submitted With Certain I-140 Petitions; Revisions to the Adjudicator's Field Manual (AFM) Chapter 22.2, AFM Update AD11-14. page 6 (Dec. 22, 2010), https://www.uscis.gov/policy-manual/volume-6-part-f.

[5] Id.

a sales executive was critical to the large, multinational company whose equipment he sold, or to his actual employer,

Evidence of the Petitioner's role for another organization consists of a letter written to him (as a representative of by the Vice President Sales of , and another letter from a branch manager at . The letter from invites the Petitioner to participate in upcoming training, and thanks him for "support of our product line." The second letter confirms that the Petitioner was employed as a crane specialist by for at least two years, and that he was "very successful in promoting Our company and obtaining orders." Although this letter indicates that he was a successful salesperson, which is confirmed by the letter from it is not sufficient to show that the Petitioner played a leading role for either company, or that his part in the sales of equipment was critical to the overall success of or

We note that the Petitioner argued in his RFE response that "sales people with variety of titles always have leading roles in commercial organizations since if there are no sales people there are no sales…" However, this argument does not address the requirements of this criterion, which focus on the Petitioner's individual roles, not those of salespeople in general. Further, the evidence does not indicate that he served as a leader for any of these companies, or that the volume of sales for which he was responsible was of such significant importance that it was critical to the success of the overall organization.

The Petitioner also asserts on appeal that the Director's finding regarding the absence of evidence of the distinguished reputation of these companies was based upon the Director's failure to "ascertain [this information] through presented weblinks." This refers to the invitation in his RFE response to search the terms and (the websites of the successors to and respectively) through the Google search engine. However, 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). The Petitioner did not submit specific evidence in support of the distinguished reputation of any of the organizations for which he claims to have played a leading or critical role.

For all of the reasons given above, we find that the Petitioner does not meet this criterion.

III. CONCLUSION

As discussed above, we find that the Petitioner does not meet the criteria relating to lesser awards, published material about him, participation as a judge of the work of others, contributions of major significance, authorship of scholarly articles, and leading or critical role. While he also claims eligibility for two additional criteria under 8 C.F.R. §§ 204.5(h)(3)(vii) and (ix), we need not reach these additional grounds. As the Petitioner cannot fulfill the initial evidentiary requirement of meeting at least three of the ten criteria, we reserve these issues.[6] We therefore need not provide the type of final merits determination referenced in Kazarian, 596 F.3d at 1119-20. Nevertheless, we advise that

[6] See INS v. Bagamasbad, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach).

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 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, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.