U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 5057049

Date: FEB. 25, 2020

Appeal of Texas Service Center Decision

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

The Petitioner, an international strategic consulting firm, seeks classification of the Beneficiary, a senior director and expert in the field of [redacted] trade and diplomatic relations, 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 established 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 he meets at least three of the ten criteria.

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). 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).

II. ANALYSIS

The Petitioner currently employs the Beneficiary as an advisor in the field of trade and diplomatic relations.[1] The Beneficiary served as the [redacted] from 2007 through 2013, and holds a master of public policy from [redacted] University and a bachelor of science in foreign service from [redacted] University.

A. Evidentiary Criteria

Because the Petitioner has not indicated or established that the Beneficiary has received a major, internationally recognized award, it must demonstrate that he satisfies at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Director found that the Beneficiary met two of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), relating to leading or critical role and salary. On appeal, the Petitioner asserts that the Beneficiary also meets the evidentiary criteria relating to published material and scholarly articles and newly claims that he meets the criterion for original contributions. It also requests that we consider additional documentation as comparable evidence for the artistic display criterion at 8 C.F.R. § 204.5(h)(3)(vii).[2] After reviewing all of the evidence in the record, we find that the record does not support a finding that the Beneficiary meets at least three of the evidentiary criteria, as required.

[1] The Petitioner indicates that the Beneficiary currently holds H1-B status.

[2] The Director determined that the Petitioner's evidence did not meet the published material criterion at 8 C.F.R. § 204.5(h)(3)(iii) because the submitted material was not about him. The Petitioner contests that determination on appeal, but also asserts on appeal that media coverage should be evaluated as comparable evidence under the regulation at 8 C.F.R. § 204.5(h)(4).

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 Director previously determined that the Petitioner had not submitted sufficient evidence to establish that the Beneficiary met this criterion. In the appellate brief, the Petitioner lists four articles that it asserts establish the Beneficiary's eligibility for this criterion.

Two of these are about the Beneficiary and relate to his work. The first, '[redacted]' published on the Business Insider website (businessinsider.com), is an interview with the Beneficiary from his perspective as a former diplomat. The second, published on the Yahoo Finance website (finance.yahoo.com), '[redacted]' is about meetings the Beneficiary held with [redacted] conglomerates, and their views on the trade agreement. The Petitioner also provides the online circulation statistics for finance.yahoo.com. However, it does not include comparable data for other websites, or other relevant evidence, that might show that the on-line circulation for these websites is high in relation, or that they otherwise rise to the level of major media, as required.

As it relates to businessinsider.com, the Petitioner submits a printout from insider-inc.com containing the total number of unique visitors, monthly video views, "fans and followers," and average monthly interactions for that website. This document does not provide on-line circulation statistics for businessinsider.com, the website on which the published material appeared. The Petitioner does not otherwise show how on-line circulation statistics for insider-inc.com demonstrate businessinsider.com's status as a major medium.

The remaining articles quote the Beneficiary, but are not about him. The first article, '[redacted]' was published in print and online by [redacted] and in several newspapers owned by that company.[3] The article is predominantly about the diplomatic community's response to a leaked transcript of a phone conversation between the United States President and the [redacted] President. The second, '[redacted]' was published online at qz.com. The article's focus is the diplomatic relations between the [redacted]. Articles that are not about a petitioner do not meet this regulatory criterion. *See, e.g., Negro-Plumpe v. Okin,* 2:07-CV-820-ECR-RJJ at *1, *7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles regarding a show are not about the actor.) As an additional matter, we note that while the Petitioner provides circulation statistics for both the [redacted] and qz.com, it does not provide comparable data to show that these values are high relative to that of other newspaper companies or websites, respectively, or otherwise show that this company or website rise to the level of major media.[4]

[3] The record also reflects that this article was reprinted online in the *Miami Herald*, the *Idaho Statesman*, *The Sydney Morning Herald*, the *Greenfield Recorder*, the *Brisbane Times*, and the *Sacramento Bee*, [redacted].

[4] *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* 7 (Dec. 22, 2010),

For the foregoing reasons, the Petitioner therefore has not demonstrated the Beneficiary's eligibility for 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)

For the first time on appeal the Petitioner asserts the Beneficiary's eligibility for this criterion. It specifically references the Beneficiary's "novel approach" in "meeting with leaders from each of [redacted]s provinces, municipalities, and autonomous regions" when '[redacted]'

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 contributions that were original but that they have been of major significance in the field. For example, a petitioner may show that the beneficiary's contributions have been widely implemented throughout the field, have remarkably impacted the field, or have otherwise risen to a level of major significance in the field.

The Petitioner submits expert testimonials from senior elected officials, former diplomats, and business consultants discussing the Beneficiary's work in the field. [redacted] from 2006 to 2012, notes that the Beneficiary built "solid ties with interlocutors at the highest levels of the [redacted] government," and was "invaluable in promoting both [redacted] companies with interests in [redacted] investment in [redacted]' However, his testimony does not provide specific examples showing how the Beneficiary built these relationships with [redacted] government officials, or otherwise indicate how this approach is an original contribution in the Beneficiary's field. The correspondence further lacks specific examples of how this approach has widely impacted or been widely implemented in the field. Letters that lack specifics do not add value, and are not considered to be probative evidence that may form the basis for meeting this criterion.

[redacted], who served as [redacted] from 2006 to 2012, references the Beneficiary's "unique approach" in visiting "every single [redacted], where he secured meetings with Governors and [redacted] Secretaries." She provides examples of the Beneficiary's actions, and asserts that "[a]s a result of [the Beneficiary's] efforts, important provinces… sent high-level delegations to [redacted] received [redacted] business delegations, and entered into commercial agreements with [redacted] exporters." She further contends that this novel strategy "led to an increase in [redacted] exports to [redacted] from US 3.2 billion in 2007 to US 9.1 billion in 2012." [redacted], managing director and portfolio manager at [redacted], describes the Beneficiary as being "instrumental in orchestrating a delegation to [redacted] of top-level representatives of the [redacted]" [redacted] explains that this delegation was "crucial" both because it included the "heads of provincial branches" and because "it was the first time such high-level [redacted] executives had visited [redacted]' He asserts that these efforts "led to

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https://www.uscis.gov/policymanual/HTML/PolicyManual.html (noting that evidence of published material about the alien in major media should establish that its circulation (on-line or in print) is high compared to other circulation statistics.

[4] While we discuss a sampling of the articles here, we have reviewed the record in its entirety.

[redacted]s opening operations in [redacted] and to increased [redacted] direct investment in [redacted] from [redacted] provincial entities." Opinion letters from experts in the field may establish eligibility under this criterion, if they contain a probative analysis articulating the significance of an individual's contributions and their impact on the field; however, letters that lack specifics do not add value and are not considered probative evidence to establish eligibility.[5] Here, while descriptive of the Beneficiary's achievements, the testimonial letters do not explain how his work on behalf of [redacted] has impacted the broader field of trade and diplomatic relations. Without analysis explaining how the Beneficiary's work has been of major significance to the field, the letters do not establish eligibility for this criterion.

The record also includes a translated statement from the [redacted] titled '[redacted]' media coverage of trade deals, photographs of the Beneficiary's meetings with [redacted] provincial leaders, and a table entitled '[redacted] extracted from the article '[redacted]' authored by [redacted][6] While these documents demonstrate achievements in trade during the Beneficiary's time as [redacted] they do not identify his role in accomplishing them, or otherwise demonstrate that his role has widely impacted or influenced the broader field of trade and diplomatic relations. For example, while the document from the [redacted] announcing a bilateral agreement to export pork from [redacted] [redacted] notes that the Beneficiary participated in the [redacted], the record lacks evidence showing the role he played in securing this agreement, or demonstrating that others in his field have used his approach. The news article and paper extract in the record also discuss trade deals occurring during the Beneficiary's [redacted] but do not reference him specifically. The article '[redacted]' discusses how the bank has "conducted extensive and fruitful exchanges and cooperation with the [redacted] government," but does not differentiate the Beneficiary's role in these meetings from that of other officials. The article [redacted] only notes that [redacted]'s history in [redacted] "began in 2010" when it signed a joint venture agreement with a [redacted] ceramic manufacturer, leading to an increase in sales in [redacted]. The extract from the paper indicates the increase in exports during the time that the Beneficiary was [redacted] but does not demonstrate the relationship between his actions and the resulting increase in trade, or otherwise establish that the Beneficiary's approach has been widely implemented in or widely impacted his field. Finally, while the photographs of the Beneficiary demonstrate that he met with various [redacted] officials, they do not indicate the purpose or significance of his visits. The record lacks media, meeting agendas, or other evidence that might demonstrate the Beneficiary's novel trade approach. Accordingly, these materials are insufficient to establish that his actions as [redacted] in relation to these outcomes, or that his approach has impact and analysis has subsequently been implemented widely in the field of diplomatic and trade relations, or is otherwise of major significance in this field.

In addition to the expert testimony, the record reflects that the Beneficiary has published and presented his work. For example, he published a chapter entitled [redacted] in the book [redacted] published by the Brookings Institute." He also delivered guest lectures lectured at

the University of [redacted] and for the [redacted] University's [redacted] Program. Publications and presentations, however, 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. There is no presumption that every published article or conference presentation is a contribution of major significance in the field; rather, a petitioner must document the actual impact of the beneficiary's article or presentation.[7] The record does not show that the Petitioner's published and presented work has affected his field in a substantial way or that it otherwise equates to original contributions of major significance in the field.

The Petitioner provides letters from [redacted] at [redacted] and from [redacted] Professor of Public Management at [redacted] University, regarding the Beneficiary's presentations at these institutions. [redacted] notes that at [redacted], "he presented a thought-provoking and original thesis comparing the political models of the [redacted] and [redacted]" and that this lecture "quickly became a reference point for [redacted] and scholars as it contributed to new parameters for comparative study of one-party political systems." [redacted] discusses the Beneficiary's role as guest lecturer on [redacted] with the [redacted] Program, stating, "[h]is lectures were extremely engaging and substantive...." However, [redacted]'s letter does not contain specific examples of how the Beneficiary's thesis became a reference point or how it widely impacted the field such that it rises to the level of a contribution of major significance in the field. [redacted]'s letter similarly lacks detailed examples of the wide impact of the Beneficiary's lectures on the field. As we note above, letters that lack specifics do not add value, and are not considered to be probative evidence that may form the basis for meeting this criterion.[8]

The record further reflects that the Beneficiary has been quoted in articles appearing in *The New York Times*, *The Guardian* and online at newsweek.com, among other sources. However, the Petitioner does not show how being quoted in these sources demonstrates that the Beneficiary's [redacted] methods in [redacted] have been widely implemented throughout the field, have remarkably impacted the field, or have otherwise risen to a level of major significance in the field.

For the aforementioned reasons, the Petitioner has not established that the Beneficiary meets 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)

As mentioned above, the record includes evidence establishing that the Beneficiary has authored a chapter entitled, '[redacted]' in the book [redacted] published by the Brookings Institute. It also reflects that the Beneficiary wrote a policy report entitled [redacted]

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[7] Generally, citations can confirm that the field has taken interest in a scholar's work. The Petitioner submitted Google rankings indicating that others have cited to these papers; however these citations do not reflect that his work was singled out as particularly important. The Petitioner has not demonstrated that the citations to his work, considered both individually and collectively, are commensurate with contributions "of major significance in the field."

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

[redacted]?" published by the Atlantic Council's Adrienne Arsht Latin America Center. The record includes sufficient evidence to demonstrate that this work constitutes a scholarly article in a professional publication.[9] Accordingly, the Petitioner has established that the Beneficiary meets this criterion, and we will withdraw the Director's finding in this matter.

> *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)

We find that the Beneficiary meets this criterion based upon his [redacted]

> *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 Director determined that the Petitioner established that the Beneficiary has commanded a high salary in relation to others in the field, and thus met this criterion. Upon review, we find evidence in the record does not sufficiently establish this. First, we note that the record does not establish the salary commanded by the Beneficiary. With its initial filing, the Petitioner indicates that it will employ the Beneficiary "at a minimum annual base salary of $150,000 plus commissions and bonuses,"[10] and provides the Beneficiary's 2017 Form W-2, Wage and Tax Statement, showing that he earned $417,577.20 in that year. On appeal, the brief asserts that the Beneficiary "commands a high salary relative to others in his field ($435,000)." The Petitioner must resolve this inconsistency in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Here the record does not provide sufficient documentation to establish the Beneficiary's base salary and other remuneration.

Even were we to find that the record established the Beneficiary's salary, the Petitioner does not submit position-appropriate evidence sufficient to establish that he has commanded a high salary relative to other [redacted] experts. Specifically, the record contains a printout from the Department of Labor's Office of Foreign Labor Certification Online Wage Library providing wage ranges for economists. However, the Petitioner does not demonstrate how the Beneficiary's role as an advisor in the field of [redacted] is equivalent to the role of an economist such that this printout shows the salaries of others in the field.[11]

For the abovementioned reasons, the Petitioner has not provided evidence sufficient to demonstrate that the Beneficiary meets this criterion, and we will withdraw the Director's finding to the contrary in this matter.

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[9] A scholarly article should be written for "learned" persons in the field. "Learned" is defined as having or demonstrating profound knowledge or scholarship. Learned persons include all persons having profound knowledge of a field. *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 9.

[10] The record also includes a letter from [redacted] managing partner for the Petitioner, confirming that the Petitioner intends to employ the Beneficiary at a minimum annual base salary of $150,000 per year plus commissions and bonuses.

[11] This printout indicates that economists command a level 4 wage of $150,218 annually.

B. Comparable Evidence

On appeal, the Petitioner argues that "magazine articles and op-eds published in major media, quotes by him in major media articles, and public speeches before prestigious audiences" should be considered as comparable evidence of the eligibility criterion at 8 C.F.R. § 204.5(h)(3)(vii), a criterion that requires "[e]vidence of the display of the alien's work in the field at artistic exhibitions or showcases."[12] The regulation at 8 C.F.R. § 204.5(h)(4) allows for comparable evidence if the listed criteria do not readily apply to his occupation. A petitioner should explain why he has not submitted evidence that would satisfy at least three of the criteria set forth in 8 C.F.R. § 204.5(h)(3) as well as why the evidence he has included is "comparable" to that required under 8 C.F.R. § 204.5(h)(3).[13]

Here, the Petitioner has not shown that the listed criteria do not readily apply to his occupation. He has not asserted or demonstrated that he cannot offer evidence that meets at least three of the ten criteria. As discussed, the Petitioner has claimed to meet more than three criteria. Moreover, the Petitioner has not shown that senior directors with expertise in diplomatic and trade relations cannot present evidence relating to the other regulatory criteria such as receiving awards for excellence and membership. *See* 8 C.F.R. § 204.5(h)(3)(i) and (ii). As such, the Petitioner has not established that he is eligible to meet the initial evidence requirements through the submission of comparable evidence.[14]

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 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)

[12] We note that our decision addressed the Beneficiary's published articles and opinion pieces, speaking engagements, and quotes under the original contributions criterion at 8 C.F.R. § 204.5(h)(3)(v). Furthermore, as discussed above, we found that the Beneficiary's published works entitled [redacted] and [redacted] fulfilled the authorship of scholarly articles criterion at 8 C.F.R. § 204.5(h)(3)(vi).

[13] *See* USCIS Policy Memorandum PM-602-0005.1, *supra*, at 12.

[14] On appeal, the Petitioner cites an AAO non-precedent decision for the proposition that to prove eligibility under 8 C.F.R. § 204.5(h)(4), one must only demonstrate that at least one criterion is not applicable, and that the submitted evidence is comparable to that criterion. This decision was not published as a precedent and therefore does not bind USCIS officers in future adjudications. *See* 8 C.F.R. § 103.3(c). Instead, we are bound by the published policy memorandum referenced above.

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.