U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 7953423

Date: MAR. 19, 2020

Appeal of Nebraska Service Center Decision

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

The Petitioner, a software development executive and collateralized loan (CLO) specialist working in the field of business and financial technology, 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 meets the initial evidence requirement of at least three criteria under 8 C.F.R. § 204.5(h)(3)(i)-(x).

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)

II. ANALYSIS

The Petitioner is currently employed as the Vice President of Applications Development and CLO Loan Specialist with an investment firm. The evidence indicates that he has over 20 years of experience in software development in the financial technology field.

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 he met two of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), relating to his leading or critical role for a distinguished organization and to his high salary relative to others in his field. On appeal, the Petitioner asserts that he also meets the evidentiary criteria relating to original contributions of major significance and membership in an association requiring outstanding achievements.[1] After reviewing all of the evidence in the record, we disagree with the Director regarding the Petitioner's salary, and do not find that he meets the requisite three alternative evidentiary criteria.

> *Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.* 8 C.F.R. § 204.5(h)(3)(ii)

The Petitioner submitted evidence that he received a credential as a Chartered Financial Analyst (CFA) from the CFA Institute in 2017. In a letter submitted in response to the Director's request for evidence (RFE) and resubmitted with his appeal, the President and CEO of the organization explains that the CFA Charter is awarded to a candidate after they become a member of the CFA Institute, obtain four years of professional work experience "in the investment decision-making process," and pass three exams. He also states that "only 16% of the candidates who enroll in this program end up earning the

[1] The Petitioner does not contest the Director's decision regarding the criteria at 8 C.F.R. § 204.5(h)(3)(i) and (iii). We therefore consider these issues to be abandoned. *See Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005); *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (the court found the plaintiff's claims to be abandoned as he failed to raise them on appeal to the AAO).

charter," although he does not explain the reasons behind this statistic. Nevertheless, the Petitioner has not established that minimum experiential qualifications and the payment of dues to an association are achievements that demonstrate that a candidate stands out from his or her peers. In addition, there is insufficient evidence that successful completion of the exams is considered to be an outstanding achievement, or that the candidates for the CFA Charter are judged by recognized national or international experts in the field of financial analysis. As such, the Petitioner has not established that he meets 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)

In order to satisfy this criterion, the Petitioner must establish that not only has he made original contributions, but that they have been of major significance in the field. For example, he 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 Petitioner identifies his original business-related contribution as the migration, implementation and integration of a specialized application, [redacted] for his current employer, [redacted] He submitted several reference letters in support of this claim, including two additional letters accompanying his appeal brief.[2] The first of these letters is co-signed by [redacted] Chief Information Officer, [redacted] and a portfolio manager, [redacted] It explains that the Petitioner "enhanced our internal systems by implementing and subsequently supplementing and enhancing [redacted] a portfolio management analytics and reporting system," the results of which "has played an instrumental role in helping our CLO group develop into one of the firm's largest revenue generators." The writers go on to state that while the Petitioner's contributions are proprietary to [redacted] and have thus not been adopted by other investment firms, "they should be considered to be a significant contribution to his field as a whole given [redacted] s leadership role in the CLO industry."

The second new reference letter submitted on appeal is signed by [redacted] CEO of [redacted] confirms that while investment management firms typically employ vendor software applications, "many firms seek to develop their own proprietary technologies" which are confidential and may allow them to gain a competitive advantage.

These letters are in addition to those submitted with the Petitioner's original filing and in response to the Director's RFE. One example was submitted by [redacted] CEO of [redacted], who indicates that he first met the Petitioner as a stock broker with the [redacted] Stock Exchange. [redacted] states that he is aware that the Petitioner's work made [redacted] s "loan group highly technologically efficient," despite not claiming to have been employed by or worked with the company, and that [redacted] fund managers like [redacted] must "work with individuals with the requisite expertise and knowledge" like the Petitioner to design solutions meeting accounting and regulatory standards.

[2] All reference letters have been reviewed, including those not specifically mentioned in this decision.

Another reference letter was written by [redacted] who previously served as a product manager of [redacted] for its developer, [redacted] and worked with the Petitioner to implement the application at [redacted]. She describes the Petitioner's work to enhance [redacted] and integrate it with other systems, and notes that he is "one of those top notch professionals in the wealth management world who are experts in IT and experts in structured financial instruments." [redacted] also indicates that such individuals "are key players and their valuable contributions are very essential for continued U.S. economic success."

In addition, in a separate reference letter previously submitted, [redacted] indicates that "with the help of [the Petitioner's] team as well as the work of other teams at the firm, our loan business has grown to 7+ billion as of today and contributes meaningful revenue to the firm."

While this evidence demonstrates that the Petitioner's original contribution to his employer has directly led to more efficient internal operations, improved customer service and business growth in its CLO group, it does not establish that it was of major significance to the investment management industry in which he is employed or in the overall field of business and financial technology. While we acknowledge that such proprietary technology, by its very nature, would not be implemented at other investment management firms, or applied more broadly by others in the financial technology field, it remains the Petitioner's burden to establish how his contribution has otherwise impacted his field of endeavor. The assertion that [redacted]'s position in the niche area of CLO trading leads to the conclusion that the Petitioner's contribution to his employer is of major significance for the broader investment management industry is not supported by the evidence. The record shows [redacted] to be a reputable firm in the CLO market, having earned a [redacted] award for "Best New US CLO" for [redacted] but does not otherwise demonstrate that its share of that market or in the investment management industry as a whole elevates the impact of the Petitioner's contribution to the requisite level. Accordingly, this criterion has not been met.

> *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)

As noted above, the reference letters sufficiently establish that in implementing [redacted] and integrating it with several other systems, leading to increased operational efficiency and customer satisfaction, the Petitioner played a critical role for [redacted] In addition, the record sufficiently demonstrates that [redacted] enjoys a distinguished reputation. We agree with the Director that this criterion has been met.

> *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)

To satisfy the requirements of this criterion, the Petitioner must establish that his salary, or total remuneration, is high or significantly high, respectively, based on a comparison with others in his field in similar positions and geographic locations.[3] In his decision, the Director determined that the

[3] *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.* at 11 (Dec. 22, 2010), https://www.uscis.gov/policymanual/HTML/PolicyManual.html, noting that it is the petitioner's burden to provide geographical and position-appropriate evidence to establish that a salary is relatively high.

evidence establishes that the Petitioner's salary is high relative to others in his field. That evidence includes the Petitioner's IRS Forms W-2 for the years 2015, 2016, 2017, and 2018, which show that he earned approximately $151,000, $148,000, $164,000 and $148,000 during those years, respectively. The Petitioner also submitted evidence that his base salary at the time of filing was $150,000, that he earned a $12,000 bonus in 2018, and that the value of his benefits package was almost $35,000. However, because the comparative salary survey evidence submitted does not indicate that bonuses and benefits were included in all of those figures, we will only consider the Petitioner's base salary in making our determination.

The Petitioner submitted comparative salary data from several sources, which is summarized in the table below:

Source	Job Title	Location	Avg./Med. Salary	Higher Salary
FLC Data Center	SW Developer, Applications	[redacted]	$138,861 (Level IV)	n/a
OOH	SW Developer	National	$105,590	n/a
Career One Stop	SW Developer, Applications	National	$77,710-$128,960 (typical)	n/a
US News	SW Developer	National	$101,790	$128,960 (75%)
Glassdoor	SW Developer	National	$80,018	n/a
Payscale	SW Developer	National	$70,388	n/a

We note that with the exception of the data from the U.S. Department of Labor's FLC Data Center, the salaries listed above are national averages which do not take into account variances due to local costs of living and other factors. This data is therefore not geographically appropriate, which can be seen in the significantly higher figure reported for [redacted] in the FLC Data Center data,[4] and does not provide an accurate or complete basis for comparison to the Petitioner's salary.

Although not submitted or referenced in the record, the FLC Data Center website provides an explanation of the four wage levels presented in its data. Employees at Level IV are considered to be "fully competent," "use advanced skills and diversified knowledge to solve unusual and complex problems," and "generally have management and/or supervisory responsibilities." As this description fits that of the Petitioner's skill level and duties as described in the record, it is the most appropriate wage level to use as a basis for comparison to the Petitioner's salary. In three of the four years of salary data provided, the Petitioner earned between approximately $10,000 - $13,000 above the Level IV wage for software developers in [redacted], while earning approximately $26,000 above that wage in 2017. Further, his base salary at the time of filing was approximately $11,000 above that FLC Data Center wage for 2018. This comparison with similarly situated workers in [redacted] shows that while the Petitioner earned an above average salary, it does not establish that his salary was high in relation to those other software developers. Therefore, we disagree with the Director and find that the Petitioner does not meet this criterion.

[4] We note that a review of the source websites shows that in some cases, geographically appropriate data was publicly available.

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. 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 and recognition 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 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.