U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 6388134

Date: MAR. 30, 2020

Appeal of Nebraska Service Center Decision

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

The Petitioner, the managing partner of a venture capital firm, 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,
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> (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 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 was employed in Japan at [redacted], a telecommunications company; his exact title and responsibilities there are not clear from the record. He seeks employment as the managing partner of the U.S. office of [redacted], a venture capital firm. The Petitioner contends that he "enjoys an international reputation as one of the top venture capitalists in the world," and "as a pioneer who single-handedly developed the Japanese startup scene."

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 five criteria, summarized below:

- (iii), Published material about the alien in professional or major media;
- (iv), Participation as a judge of the work of others;
- (v), Original contributions of major significance;
- (vi), Authorship of scholarly articles; and
- (viii), Leading or critical role for distinguished organizations or establishments.

The Director found that the Petitioner did not meet any of the claimed the evidentiary criteria. On appeal, the Petitioner maintains that he meets all five that he had previously claimed. After reviewing all of the evidence in the record, we agree with the Director, as explained below, that the Petitioner does not meet any of the claimed criteria.

> *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 copies of articles from several publications. The only publication that meets the "professional or major trade publications or other major media" requirement is *Asahi Shimbun*, a major Japanese newspaper. *Asahi Shimbun* held a symposium about its Accelerator Program and venture investments, and the newspaper printed quotations from the Petitioner and three other participants. The article also identified the occupations of each of the symposium's participants. Although the

Petitioner is quoted several times in the article, the article is about corporate venture capital, and presents the perspectives and observations of the symposium participants regarding the state of corporate venture capitalism in Japan and abroad. The Petitioner's brief comments in this article are not enough to satisfy the regulatory requirements.

> *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).

The Petitioner initially stated that he "contributed to the field in a major way by opening channels of investment between Japan and [redacted]:

> While [the Petitioner] worked at [redacted], he led the investment team in a then little known startup called [redacted]. After investing an initial $2 Million, [redacted] invested another $15 Million later on. Today, [redacted] is worth over $1 Billion and [redacted] earned a return of four times its original investment. . . . [The Petitioner] developed the structure that has since then been used countless times by Japanese venture capitalists.

The Petitioner submitted evidence of his involvement in [redacted]'s investment in [redacted] but did not provide objective evidence to support his key claim that Japanese venture capitalists follow the model that he established.

The Petitioner submitted letters from five individuals:

- The spouse of Japan's prime minister, who met the Petitioner during a business trip, asserts that the Petitioner "achiev[ed] successful investment in [redacted] company and business collaborations with startups."
- The former chief executive officer (CEO) of [redacted] states that the Petitioner "concluded the partnership contract within 3 months," whereas "it usually takes about 6 months to finalize a deal with a large Japanese company."
- The founder and CEO of [redacted] "Japan's No. 1 [redacted] company," who worked with the Petitioner and the then-CEO of [redacted] "on the [company's] expansion in Japan." He calls the Petitioner "a very rare talent" with "deep insights of the US venture capitalist and market and startup ecosystem."
- The vice president of [redacted], involved in "investing in startup companies in the United States," states that the Petitioner "advised us with thorough knowledge [of] startups in [redacted] and [redacted]." He states that the Petitioner "has helped to attract

many Japanese companies to [redacted]," and "is recognized [as the] first choice to meet when in [redacted] as he always gives practical and insightful advice."
- The chief representative of [redacted]s [redacted] office appointed the Petitioner as a mentor because he "was very impressed with [the Petitioner's] experience as an investor in [f]ast-paced startups, and as the mastermind behind countless collaboration[s] between US startups and large companies in Japan."

While the letter writers praise the Petitioner and his abilities, they do not explain how specific original contributions are of major significance in the field, rather than important to specific companies. General assertions regarding the Petitioner's reputation cannot suffice in this regard. The letters do not indicate that the Petitioner has had a significant and broadly evident effect on the way Japanese venture capitalists invest in U.S. businesses.

The Director requested documentary evidence to establish both the nature and the significance of the Petitioner's contributions to the field. In response, the Petitioner stated:

> I came up with the blue print on how large Asian companies could successfully invest in [redacted] The previous model involved the company itself making the investment, which often involved a complex, lengthy, and tedious approval process frequently leading to the start-up closing a deal with a competitor. My approach was different: I would help such large corporation[s] create a small, autonomous, and independent investment arm: this structure proved to be the key to successful investment in the United States, and has helped large companies generate large returns.
>
> This model was followed by others. For instance, [redacted] the finance newspaper, followed in my footsteps: the company created a venture capital arm called [redacted] [redacted] Essentially, before setting up the fund, [redacted] used to invest in start-up companies directly. The spin off from the company's headquarter[s] helped it to succeed.

In his letter, the vice president of [redacted] acknowledged that the Petitioner provided "practical assistance" when the company established [redacted], but he did not indicate that, in doing so, the company was following a model that the Petitioner had established.

The Petitioner submitted information about Japanese investment in American companies, but this information did not mention the Petitioner or establish how his activities had major significance. Furthermore, the submitted materials address Japanese investment in the aggregate, and do not distinguish between investment in startups and in more established businesses.

In the denial notice, the Director concluded that the Petitioner had made original contributions, but had not shown them to be of major significance in the field. The Director stated: "most of the letters of support were written by experts who have employed, instructed, or collaborated with" the Petitioner, and therefore did not amount to independent assessments of the Petitioner's work.

On appeal, the Petitioner states that "none of the letters . . . are from individuals who worked for [the Petitioner], or for whom [the Petitioner] worked." The individuals do not appear to have been the Petitioner's employers or employees, but the Director was broadly correct in that four of the five writers have worked closely with the Petitioner in some way.

The Petitioner states that these ties to the writers do not inherently discredit the letters. This is true as far as it goes, because individuals close to the Petitioner are in a position to attest to the nature of the Petitioner's activities. But those individuals cannot directly attest to the effect that the Petitioner's work has had outside of his own circle of colleagues, clients, and collaborators. If the Petitioner's work has had a significant impact on the field, then that impact would not be limited to those who have worked closely with him.

The Petitioner asserts that he "developed a new process for large companies to quickly and efficiently invest foreign funds into the US economy, specifically young startup companies," and that "his new process has rapidly been adopted by other Japanese companies and is now common practice among large Japanese companies." This vague and general statement lacks the details and corroboration necessary to verify such claims. The Petitioner has not shown that companies to which he has no direct connection have, nevertheless, adopted his "new process," with field-wide significance. The Petitioner has not documented what was "common practice among large Japanese companies" or submitted direct, documentary evidence to show that his method has supplanted former "common practice" to a significant extent.

The Petitioner has not established that he made original contributions of major significance in his field.

> *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 a piece with the (translated) title "[redacted]" The Petitioner stated that the piece is an article published in *Nikkei Shimbun*, "the world's largest financial newspaper."

Outside the academic arena, 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. 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*, 9 (Dec. 22, 2010), http://www.uscis.gov/legal-resources/policy-memoranda.

The submitted piece is written in an informal style, and conveys the Petitioner's personal perspectives rather than scholarly findings. For example, one sentence reads: [redacted] The Petitioner also speculates about business matters, stating: [redacted]

The Director found that the submitted writings "are not scholarly in nature." On appeal, the Petitioner states that the "article contains concrete advice and recommendations regarding the strategy behind corporate restructuring," and that he "clearly intended to write an article to be read by learned persons in his field of expertise and his choice of The Nikkei demonstrates that." The article begins with general opinions and observations before focusing on restructuring at Google and related companies. While this information would be of greatest interest to a specialized audience, the content of the piece appears to be at the level of general commentary rather than "profound knowledge or scholarship."

The Petitioner also contends that *Nikkei Shimbun* is a business newspaper "intended to be read by learned businesspeople, and therefore scholarly." This argument does not address the content of the article itself. Rather, the Petitioner seeks to establish that the article appeared in a scholarly forum.

However, we need not consider whether *Nikkei Shimbun* is a scholarly publication, because the Petitioner has not shown that *Nikkei Shimbun* published the article. The submitted printout is from *Medium.com*, and it appears to be a post from a blog entitled *The Sun Also Rises*. A separate printout appears to show that a link to the blog post appeared on another website, which *may* be *Nikkei Shimbun*'s site, but this is not clear because the printout is untranslated and greatly reduced in size. The link is at the bottom of the page, consistent with the placement of sponsored links to outside content that routinely appear on many news sites. The Petitioner did not show that *Nikkei Shimbun* directly published the piece or exercised any editorial control over its content or publication.

Furthermore, the evidence indicates that the piece is one of a series of blog posts, rather than a standalone article in *Nikkei Shimbun*. There is a "(2)" in the title; the piece begins with the phrase "[l]ast time . . . "; and the final sentence is "[n]ext time I would dig deeper and consider these hints." Nevertheless, the Petitioner claims only this one piece as a scholarly article. The Petitioner has not shown that *The Sun Also Rises* is a professional or major trade publication or other major media.

There remain two further claimed criteria:

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

Because the Petitioner cannot meet the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3), detailed discussion of these last two criteria cannot change the outcome of this appeal. Therefore, we reserve the remaining issues.[1]

[1] *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); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

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.

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.