U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 6255658

Date: MAR. 30, 2020

Appeal of Nebraska Service Center Decision

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

The Petitioner, a vice president and quantitative analyst at [redacted], 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 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 has worked in quantitative analysis at [redacted] since 2009, and in his current position as vice president and quantitative analyst since 2016.[1]

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 four criteria, summarized below:

- (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 two of the evidentiary criteria, numbered (viii) and (ix). On appeal, the Petitioner asserts that he also meets the other claimed evidentiary numbered (v) and (vi). After reviewing all of the evidence in the record, we agree with the Director that the Petitioner met only two claimed criteria; therefore, we will only address the criteria relating to authorship of scholarly articles and original contributions of major significance.

> *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 or co-wrote several pieces for the [redacted] platform, including *Market Commentaries*, [redacted] *Strategy Weekly*, and [redacted] *Strategy Monthly*. The Director determined that these articles (1) are not scholarly, and (2) did not appear in professional or major trade publications or other major media.

[1] The same employer filed another immigrant petition on his behalf, seeking to classify him as a member of the professions with an advanced degree. The Director approved that petition, with a priority date of December 23, 2015. The approval of that petition is not affected by the present decision.

For fields 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.[2] The market commentaries discuss rates and prices relating to international financial products, as well as market trends. The *Strategy Weekly* newsletters discuss strategies, methods, and market performance. These materials are written in technical and specialized language that is not consistently accessible to lay readers. We conclude, therefore, that the Petitioner wrote for learned persons in his field, consistent with scholarly writings.

The Petitioner, however, did not write for "*all* persons having profound knowledge of [his] field," and therefore we agree with the Director that the Petitioner did not show that the articles were published in professional or major trade publications or other major media.

Evidence of published material in professional or major trade publications or in other major media publications should identify the intended audience of the publication.[3] The *Market Commentaries* are "Intended for Institutional clients only," while the strategy documents are "For Institutional Investors Only – Not for Onward Distribution." The global head of [redacted] Wire states that these materials are "not available to the general public because they contain valuable proprietary analysis intended to provide a strategic advantage to [redacted] clients. The intended audience is [redacted] clients."

On appeal, the Petitioner asserts that "it is impossible for the work of a business professional in the field emerging markets trading and risk management to be known and used outside of the community of his employer and clients."[4]

In this instance, the Petitioner and his employer both stipulate that his writings are not available to the field at large. By design, the Petitioner's writings are kept out of the hands of most others in the industry. Therefore, those writings cannot have field-wide impact, and they cannot have the same effect as scholarly journals which exist to disseminate knowledge, and thereby advance the entire field.

Notwithstanding the asserted size of [redacted] client pool, access to the Petitioner's work is restricted in a manner that prevents us from finding that that work has been "published" in the common understanding of that word. Limited distribution is not the same as publication.

Because we have determined that the Petitioner's work did not appear in professional or major trade publications or other major media, we need not address the separate question of whether those writings were scholarly.

> *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)

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[2] *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*, 9 (Dec. 22, 2010), http://www.uscis.gov/legal-resources/policy-memoranda.

[3] *Id.*

[4] Had this matter proceeded to a final merits determination, the Petitioner would have had to explain how he was able to achieve sustained national or international acclaim in his field, when his work is deliberately limited in distribution.

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).

In order to satisfy this regulation, a petitioner must establish that not only has he made original contributions, but that they 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.

In this instance, the limited distribution of the Petitioner's work also limits the scope of his impact on the field.

The Petitioner claims several "original business-related contributions of major significance in the field related to emerging markets trading and risk management," including the following examples:

- Developed novel software for efficiently running [redacted]'s proprietary [redacted] prepayment model;
- Demonstrated the profitability of investing in the Colombian peso through risk decomposition;
- Single-handedly ran [redacted]'s investments in Brazil during the Brazilian financial crisis, generating profits for [redacted]s institutional clients while most businesses were losing money in Brazil; and
- Developed a model of Argentine hybrid bond pricing, enabling investors to properly manage the risk of investing in these novel bonds.

The Petitioner asserted that his "original business-related contributions have had a widespread, major impact on the field of emerging markets trading and risk management as his analysis have directed the risk management and investment and trading decisions of thousands of U.S. institutions." The Petitioner claimed that his work had industry-wide effects. For example, he asserted that his work "increased the stability and liquidity of Colombia's currency" and "advanced the Argentine emerging market."

The Petitioner submitted four letters that discussed some of the claimed contributions enumerated in his introductory letter. (Other letters offered more general praise for the Petitioner and his abilities.) The Petitioner also asserted that he disseminated his contributions through the written pieces discussed above.

The Director determined that the Petitioner had shown his work to be significant to his employer and its clients, but not to the field as a whole. The Director acknowledged the submitted letters, but did not consider them to be dispositive evidence of eligibility, and found that the letters lacked independent evidentiary support.

On appeal, as noted above, the Petitioner asserts that it is unreasonable for us to expect his proprietary work product to be distributed beyond his employer and its clients. The Petitioner contends that his "work influences the broader U.S. and global economies through its implementation by [redacted] and [redacted]s clients," as shown by "letters from independent experts."

U.S. Citizenship and Immigration Services (USCIS) may, in its discretion, use as advisory opinions statements from universities, professional organizations, or other sources submitted in evidence as expert testimony. *Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding a foreign national's eligibility. The submission of letters from experts supporting the petition is not presumptive evidence of eligibility. *Id.* USCIS may even give less weight to an opinion that is not corroborated or is in any way questionable. *Id.*

In this case, the letters that discuss specific claimed contributions are questionable because of similarities in structure and wording. Three of the letters discussed the same six contributions, in the same order, in wording that is similar and, at times, identical. An illustrative example is the discussion of Argentine hybrid bonds:

> [The Petitioner] developed models for the pricing and risk management of the new Argentine hybrid bonds when Argentina was allowed to return to the international capital market in 2015. Argentina's hybrid bonds are complex because of the country's past history of inflation issues.
>
> - Attributed to the head of Trading and Sales at [redacted]
>
> Argentina's return to the international capital markets in 2015 saw investors clamoring for the country's new issuance. Argentina has to issue hybrid bonds to give investors protection because they have a history of problems with inflation and interest rates. . . . [The Petitioner] developed models to provide investors with the correct pricing and risk management of these Argentine bonds.
>
> - Attributed to the executive director of Emerging Markets at [redacted] Bank
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> Post elections in 2015 . . . , Argentina's long-awaited return to the international capital markets saw investors clamoring for the country's new issuance. Due to a bad history in inflation and interest rate management, Argentina has to issue hybrid bonds to give investors protection from these adverse events. . . . [The Petitioner] used his sophisticated models to provide investors the correct pricing and risk management of this bond.
>
> - Attributed to the managing director of Emerging Markets Trading at [redacted]

A fourth letter, attributed to the managing director and head of Latin America Trading at [redacted] discussed eight of the Petitioner's claimed contributions, in a different order, but again using similar language:

> [The Petitioner] used his background in analytics to develop sophisticated models for pricing and risk management for the complex Argentine hybrid bonds that were issued when the country was emerging from its past economic woes. The hybrid bond that Argentina issued had to give investors protection from the country's previous issues with inflation and interest rates.

These similarities in language affect the letters' evidentiary weight. *See Surinder Singh v. BIA*, 438 F.3d 145, 148 (2d Cir. 2006) (upholding an adverse credibility determination in asylum proceedings based in part on the similarity of the affidavits); *see also Mei Chai Ye v. U.S. Dep't. of Justice*, 489 F.3d 517, 519 (2d Cir. 2007) (concluding that an immigration judge may reasonably infer that when an asylum applicant submits strikingly similar affidavits, the applicant is the common source). In evaluating the evidence, the truth is to be determined not by the quantity of evidence alone but by its quality. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (quoting *Matter of E-M-*, 20 I&N Dec. 77, 80 (Comm'r 1989).

In response to a request for evidence, the Petitioner submitted several more letters, attesting that no one in the Petitioner's position would disseminate proprietary work product, and that benefit to [redacted] and its client ultimately benefits the economy as a whole because [redacted] is a major bank with large and important clients. The Petitioner repeats these assertions on appeal and lists the letters he had submitted to that effect. The Petitioner, however, does not cite any specific figures or show that he had submitted documentary evidence to establish the extent to which his work has had field-wide impact.

For these reasons, the Petitioner has not established that he has made original contributions of major significance in the field.

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.