U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 11271298

Date: OCT. 14, 2020

Appeal of Nebraska Service Center Decision

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

The Petitioner, a software developer who specializes in Internet technologies, 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 Petitioner did not establish, as required, that he met at least three of the ten initial evidentiary criteria for this classification. The Director further determined that the Petitioner did not demonstrate that he intends to continue work in his claimed area of extraordinary ability in the United States. The matter is now before us on appeal.

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, the Petitioner has not met this burden. Accordingly, 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 international 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 criteria 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).

II. ANALYSIS

The Petitioner has a bachelor's degree in computer science from [redacted] University in China and nearly 20 years of experience in the Chinese software and Internet technology industry.

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) in order to meet the initial evidence requirements.

The Petitioner previously claimed to meet five of these ten criteria, summarized below:

- (iii), Published material in professional publications 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 roles for organizations with distinguished reputations.

The Director determined that the Petitioner met two of the five claimed criteria, relating to judging and authorship of scholarly articles. The record reflects that the Petitioner has written several scholarly articles published in professional publications in his field, thus satisfying the regulation at 8 C.F.R. § 204.5(h)(3)(vi). Specifically, he has authored articles published in the Chinese technology journals *Digital Space*, *Computernik*, and *Wireless Internet Technology*. However, we disagree with the Director's determination that the Petitioner satisfied the judging criterion and will address that criterion below.

On appeal, the Petitioner asserts that he also meets the evidentiary criteria relating to published materials in major media and leading or critical roles at 8 C.F.R. § 204.5(h)(3)(iii) and (viii). The Petitioner does not contest the Director's determination that he did not satisfy the original contributions of major significance criterion at 8 C.F.R. § 204.5(h)(3)(v), and therefore, we deem this issue to be waived. *See, e.g., Matter of M-A-S-*, 24 I&N Dec. 762, 767 n.2 (BIA 2009). *See also 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 determined the plaintiff's claims to be abandoned as he failed to raise them on appeal to the AAO).

After reviewing all the evidence in the record, we agree with the Director's conclusion that the Petitioner did not satisfy the initial evidence requirement by meeting at least three of the criteria at 8 C.F.R. 204.5(h)(3)(i)-(x).

> *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 two newspaper articles that are about him and relating to his work, both published in March 2019. The articles are similar in content and both appeared in Chinese-language newspapers that are published and distributed in the United States – *The China Press* and *World Journal*. Neither article identifies the author of the material, as required by this regulation.

As evidence that these newspapers qualify as major media, the Petitioner initially relied on screenshots from the publications' respective *Wikipedia* pages and the circulation figures contained therein. However, *Wikipedia* is an online, open source, collaborative encyclopedia that explicitly states it cannot guarantee the validity of its content. *See General Disclaimer*, *Wikipedia* (Sept. 29, 2020), https://en.wikipedia.org/ wiki/Wikipedia:General_disclaimer; *Badasa v. Mukasey*, 540 F.3d 909 (8th Cir. 2008).

With respect to *The China Press*, the Petitioner subsequently submitted an excerpt from *Chinese Media Guide* indicating that it is "probably the third or the fourth largest Chinese newspaper in the United States" and is printed in [redacted] and [redacted] Finally, he provided information regarding *The China Press* from an unidentified website indicating that the newspaper has a daily circulation of 70,000 copies.[1] Regarding *World Journal*, the Petitioner relied solely on the *Wikipedia* entry for this publication and submitted nothing further.

In order to establish that a given publication qualifies as major media, the Petitioner must establish that the circulation (on-line or in print) is high compared to the circulation statistics of other publications.[2] In response to a request for evidence (RFE) the Petitioner submitted a list of the "Top 10 U.S. Daily Newspapers," by print circulation, published on the "Media Blog" of the website

[1] The submitted screenshot of the unidentified website includes the copyright of [redacted]

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

www.cision.com in January 2019. The Petitioner asserted that the circulation of *World Journal* would place it in the sixth position on the list.

The Director determined that the additional evidence submitted in response to the RFE did not establish that *The China Press* qualifies as a major medium in the United States. On appeal, the Petitioner does not contest this determination. However, he contends that the Director overlooked evidence related to *World Journal* and asserts that its circulation figures place it among the top ten newspapers in the United States.

However, as noted, the Petitioner has relied solely on *Wikipedia* to support its claims regarding the circulation of *World Journal*. Accordingly, his claims are not supported by sufficient reliable and probative evidence. Further, as noted, both submitted articles lack the required information regarding the author of the published material. For these reasons, the Petitioner has not established that he satisfies 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 Director determined that the Petitioner meets this criterion, we conclude that he did not provide sufficient evidence related to the events or competitions at which he claims to have participated as a judge.

At the time of filing, the Petitioner stated that he has "frequently served as panel member, in evaluation of the quality of work of others." Specifically, he indicated that he served as one of nine judges at the "2013 Annual Meeting of [redacted]." In support of this claim, the Petitioner submitted a two-page screenshot from the website Chinae.net accompanied by a partial English translation. The translation indicates that the website refers to the 2013 Annual Meeting of [redacted]. The translation is otherwise limited to providing a list of eight "Special Invited Guests" which includes the Petitioner's name. It did not identify him as a judge or indicate what, if any, work he would be judging. Most of the text in the original Chinese-language document was not translated.[3]

In response to the Director's RFE, the Petitioner submitted a letter from [redacted], who states that he is the CEO of [redacted] and writing in his capacity as "chair of the judging panel of 2013 Annual Meeting of [redacted]" [redacted] states that the Petitioner was among nine IT leaders invited to serve on the judging panel, and states that he judged "the business model of the entrepreneurs team" with a focus on their "market analysis, financial projections and business planning." He also identifies two other members of the judging panel.

We note, however, that neither [redacted] nor the two other judges identified in [redacted]'s letter appear on the list of "special invited guests" provided at the time of filing, thus creating an inconsistency with the initial information provided regarding this 2013 meeting. The Petitioner did not attempt to resolve

[3] Any document in a foreign language must be accompanied by a full English language translation. 8 C.F.R. § 103.2(b)(3). The translator must certify that the English language translation is complete and accurate, and that the translator is competent to translate from the foreign language into English. *Id.*

this ambiguity 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). In light of this ambiguity, [redacted]s statement alone is insufficient to establish the Petitioner's participation as a judge at this event.

Further, [redacted]s brief explanation of the Petitioner's claimed judging activities does not clearly establish the nature of the event he judged in order to establish that he was responsible for judging the work of others in the same or allied field. Although [redacted]s letter suggests that the Petitioner judged some type of entrepreneurial team event, the record contains little information regarding the 2013 meeting and any competition that occurred at this event. As noted, the meeting information provided at the time of filing was not accompanied by a full English translation.

In his RFE response, the Petitioner also claimed for the first time that he had participated as a judge at the [redacted] Cup [redacted] Competition in [redacted] 2014. In support of his assertion, he submitted an invitation letter that refers to the Petitioner as the "General Manager and CEO of [redacted]' a position that he has not otherwise claimed to hold. The letter invites the Petitioner as "an important guest to participate in the competition and evaluate and assay on the projects as a judge." The letter bears the seal of the event's "competition committee" and refers to "our company" but is not on company letterhead, is not signed, and does not identify the name of the company that issued it.

The Petitioner also submitted a "Press Release Confirmation Letter" thanking him for his participation in the [redacted] Cup competition and "the wonderful remarks you made as a judge." The letter requests that the Petitioner review and approve some proposed text about his participation that would be included in a press release. This letter, which is not on letterhead, bears the seal of [redacted] Internet Technology Company, and again refers to the Petitioner as the CEO of [redacted] The Petitioner did not provide a copy of the published press release or any other supporting documentation regarding this competition, his judging activities or the nature of the event he judged. Therefore, the two letters provided are insufficient to document that he meets all elements of the criterion at 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)

The Petitioner claimed that he meets this criterion based on his leading or critical roles held with three of his employers. For a leading role, the evidence must establish that a petitioner is or was a leader. A title, with appropriate matching duties, can help to establish if a role is or was, in fact, leading.[4] Regarding a critical role, the evidence must demonstrate that a petitioner has contributed in a way that is of significant importance to the outcome of the organization or establishment's activities. It is not the title of a petitioner's role, but rather the performance in the role that determines whether the role is or was critical.[5]

The Petitioner did not claim that he satisfied this criterion at the time of filing, but in response to the RFE, he indicated that he could meet the requirements based on his roles with [redacted]

[4] *See* USCIS Policy Memorandum PM-602-0005.1, *supra*, at 10.
[5] *Id.*

[redacted] and [redacted], a subsidiary of [redacted] The Director determined that the submitted letters from representatives of these employers did not demonstrate how the Petitioner's work for these companies was leading or critical. The Director further found that the criterion was not met because "the evidence does not indicate that the organizations or establishments for which the petitioner has claimed to perform in leading or critical roles have a distinguished reputation."

On appeal, the Petitioner does not address or contest the Director's determination as it relates to his employment with [redacted] Accordingly, we will not address evidence related to the Petitioner's role with this company.

The Petitioner submits additional letters addressing his employment with [redacted] and [redacted] on appeal but does not address the Director's determination that he did not submit sufficient evidence to establish that either organization has a distinguished reputation. For [redacted] the Petitioner had submitted screenshots from *Reuters* (reuters.com) and *Bloomberg* (Bloomberg.com). The evidence obtained from *Reuters* provides a snapshot of [redacted]'s stock price on the [redacted] stock exchange as of December 10, 2019, while the *Bloomberg* screenshot confirms the company's date of establishment and states that its business includes "providing communication services." The Petitioner did not explain how these materials establish that [redacted] is recognized as having a distinguished reputation. Since the Petitioner did not meet his burden to establish that this organization has a distinguished reputation, we will not address the two letters submitted to establish the nature of his role with this company.

The Petitioner describes [redacted] as a renowned [redacted] technology company, and the [redacted] Chinese-language [redacted] portal. However, in support of his claims regarding the company's distinguished reputation, the Petitioner submitted only a screenshot from *Yahoo Finance* that provided the company's real time stock price on the Nasdaq exchange; the evidence provides no additional information regarding [redacted] or its reputation in the field. Therefore, the Petitioner did not establish that his previous role with [redacted] satisfies each element of the criterion at 8 C.F.R. § 204.5(h)(3)(viii).

With respect to this role, the Petitioner initially submitted a letter from [redacted] who states that he "has served" as general manager of the [redacted] Product Division. It is not clear when he worked for [redacted] whether he currently works there, or whether he ever worked directly with the Petitioner. [redacted] states "I supervise some 2,000 employees and many departments including [redacted] Product and [redacted] Department where the Petitioner served as director" from "2014-2010."[6] Although this statement appeared to reflect his current employment with [redacted], we note that his letter is printed on the letterhead that has a company logo for [redacted] and indicates his email address at [redacted]

[redacted] credits the Petitioner with accomplishing several "outstanding tasks," including expanding the number of UC users, developing the [redacted] voice platform [redacted], and leading the development of the [redacted] broadcast system, [redacted] voice telephone service, and the [redacted] video broadcast program. [redacted] concluded that the Petitioner made "very substantial contributions to our firm by

[6] Other evidence in the record indicates that the Petitioner worked at [redacted] from 2004 to 2010.

enhancing and internet technology" and states that his input helped [redacted] earn a "leading edge" in the market. We agree with the Director's determination that the letter lacked specific, detailed information establishing how the Petitioner's contributions were of significant importance to the outcome of the organization's activities.[7]

The Petitioner submits a second letter from [redacted] in support of the appeal. Much of the content is the same as the initial letter, but he adds some statistics, noting that during the Petitioner's tenure, the company improved in several categories of user rankings for its communications and live broadcast platforms. He also adds that the Petitioner "played a critical role and made remarkable contributions to our entire company" but he does not provide sufficient detail to establish that the Beneficiary's individual contributions had a significant impact on the company's outcomes as a whole. Nevertheless, as noted, the Petitioner did not adequately support its claims regarding [redacted] 's distinguished reputation.

For the reasons discussed, the Petitioner did not establish that he meets the leading or critical roles criterion at 8 C.F.R. § 204.5(h)(3)(viii).

B. Summary and Reserved Issue

As explained above, we find that although the Petitioner satisfies the authorship of scholarly articles criterion at 8 C.F.R. § 204.5(h)(3)(vi), he does not meet any additional criteria on appeal relating to published materials, judging, and leading or critical roles. As the Petitioner cannot fulfill the initial evidentiary requirement of at least three criteria under 8 C.F.R. § 204.5(h)(3), the appeal will be dismissed. Further, since the identified basis for denial is dispositive of the appeal, we decline to reach and hereby reserve the Director's separate determination that the Petitioner did not establish that he is coming to "continue work in the area of extraordinary ability" under section 203(b)(1)(A)(ii) of the Act. *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.

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

[7] *See* USCIS Policy Memorandum PM-602-0005.1, *supra*, at 10 (stating that letters from individuals with personal knowledge of the significance of a petitioner's leading or critical role can be particularly helpful in making this determination as long as the letters contain detailed and probative information that specifically addresses how the role for the organization or establishment was leading or critical).

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. The record indicates that the Petitioner has a successful career in the Internet technologies field but does not show his sustained national or international acclaim in the field and is not supported by extensive documentation. For example, the Petitioner's four scholarly articles, and the two media articles about him, were all recently published in 2018 and 2019, and he claims only two instances of judging the work of others in his field. Although his employers speak highly of his work-related contributions, 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.