U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 10750822

Date: SEPT. 24, 2020

Appeal of Nebraska Service Center Decision

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

The Petitioner seeks classification as an alien of extraordinary ability in computer science. *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 had satisfied only two of the initial evidentiary criteria, of which he must meet at least three.

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)(A) 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,
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> (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
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> (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 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 indicated employment as a principal platform engineer with [redacted] in [redacted] New York.[1] Because the Petitioner has not claimed 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 denying the petition, the Director determined that the Petitioner fulfilled two of the initial evidentiary criteria, judging at 8 C.F.R. § 204.5(h)(3)(iv) and scholarly articles at 8 C.F.R. § 204.5(h)(3)(vi). The record reflects that the Petitioner reviewed papers for journals and at conferences. In addition, he authored scholarly articles in professional publications. Accordingly, we agree with the Director that the Petitioner fulfilled the judging and scholarly articles criteria.

On appeal, the Petitioner asserts that he meets three additional criteria, discussed below. After reviewing all of the evidence in the record, we conclude that the record does not support a determination that the Petitioner satisfies the requirements of at least three criteria.

> *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 the regulation at 8 C.F.R. § 204.5(h)(3)(v), a petitioner must establish that not only has he made original contributions but that they have been of major significance in the field.[2] 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 the field.

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[1] On appeal, the Petitioner does not indicate his current employer.

[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* 8-9 (Dec. 22, 2010), https://www.uscis.gov/policymanual/HTML/PolicyManual.html (finding that although funded and published work may be "original," this fact alone is not sufficient to establish that the work is of major significance).

The Petitioner argues that his academic-related awards from , scholarships from University, and employment awards from and show eligibility for this criterion. Although he provided photographs of the academic awards from , the Petitioner did not support the record regarding his scholarships and employment awards. Further, the Petitioner did not demonstrate how receiving academic awards from a higher education institution reflects the significant nature of his work in the field. While he received the academic awards for his papers and research, the Petitioner did not establish the impact or influence of his papers or research in the field beyond [3]

In addition, the Petitioner contends that he "served as a manuscript reviewer for a variety of professional journals and conference organizers where he evaluates the merits to papers prior to publication." As previously discussed, we have already considered the Petitioner's manuscript reviews under the judging criterion at 8 C.F.R. § 204.5(h)(3)(iv). Moreover, the Petitioner did not establish how performing paper reviews for journals or at conferences rises to a level of major significance in the field. Here, the Petitioner did not show, for example, how he significantly impacted or influenced the field in a major way through his paper reviews beyond the individual journals and conferences.

The Petitioner also argues that "[h]is major, original contributions have lead [*sic*] to prestigious journal publications in *Intelligent Data Analysis*, 2017 Conference, Science and Technology and many others." Again, we considered the Petitioner's publication history under the scholarly articles criterion at 8 C.F.R. § 204.5(h)(3)(vi). Moreover, the Petitioner did not demonstrate that publication of articles in highly ranked journals or presentation of work at distinguished conferences automatically establishes original contributions of major significance. In addition, a publication that bears a high ranking or impact factor reflects the publication's overall citation rate; it does not show an author's influence or the impact of research in the field or that every article published in a highly ranked journal or presented at a distinguished conference automatically indicates a contribution of major significance. Publications and presentations 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.

Further, the Petitioner claims that "his papers are highly cited." The record reflects that the Petitioner submitted citatory evidence from *Google Scholar* showing that four of his papers received three, two, two, and one citation(s), respectively, with his remaining six papers garnering no citations. Generally, citations can serve as an indication that the field has taken interest in a petitioner's research or written work. However, the Petitioner has not sufficiently shown that the few citations to his work are commensurate with contributions of major significance. Here, the Petitioner did not articulate the significance or relevance of the citations to his articles or conference papers. For example, he did not demonstrate that these citations are unusually high in his field or how they compare to other articles that the field views as having been majorly significant. Although his citations indicate that some in

[3] *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8-9; *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 134-35 (D.D.C. 2013) (upholding a finding that a ballroom dancer had not met this criterion because she did not corroborate her impact in the field as a whole).

the field have referenced his work, the Petitioner did not establish that his citation numbers to his work meet the threshold of major significance.[4]

Moreover, the Petitioner submitted seven recommendation letters that generally recount his research and findings and indicate their publications in journals or presentation at conferences. Although they reflect the novelty of his work, they do not sufficiently articulate how his research and findings have been considered of such importance and how their impact on the field rises to the level of major significance required by this criterion. For instance, [redacted] professor at [redacted] indicated that he collaborated for three years with the Petitioner on a project funded by the National Science Foundation that "led to four publications, including one paper being nominated for a major conference award."[5] Here, [redacted] did not elaborate and explain the significance of the funding research in the field beyond publication and presentation. Again, publication or presentation alone is not sufficient under 8 C.F.R. § 204.5(h)(3)(v). *See Kazarian v. USCIS,* 580 F.3d at 1036, *aff'd in part,* 596 F.3d at 1115.

Furthermore, the letters indicate the Petitioner's professional accomplishments while interning or working at various entities without showing the impact or influence in the field beyond his employers or institutions. For example, [redacted], senior program manager of [redacted] claimed that during the Petitioner's internship, he "greatly helped to build [a] protype for two patents" but did not discuss the effect, if any, the patents had in the field. [redacted] CEO of [redacted], stated that "as part of his Curricular Practical Training (CPT), he worked on graph databases, and built near-real time monitoring system . . ., which has been pushed to production." Here, the letter does not detail how his work at [redacted] has been recognized in the overall field as a contribution of major significance. Similarly, [redacted], assistant professor at [redacted] indicated that "[i]n our lab and classes, we study [the Petitioner's] approach on finding important news articles . . . and have played an important guiding role in my research in lab at [redacted]." Although the letter reflects application of the Petitioner's approach in a lab and classes at [redacted], it does not demonstrate, for example, that the approach is widely studied or utilized throughout the field consistent with a contribution of major significance.

Here, the Petitioner's letters do not contain specific, detailed information explaining the unusual influence or high impact his research or work has had in the overall field. Letters that specifically articulate how a petitioner's contributions are of major significance to the field and its impact on subsequent work add value.[6] On the other hand, letters that lack specifics and use hyperbolic language do not add value, and are not considered to be probative evidence that may form the basis for meeting this criterion.[7] Moreover, USCIS need not accept primarily conclusory statements. *1756, Inc. v. The U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.C. Dist. 1990).

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[4] *See* USCIS Policy Memorandum PM 602-0005.1, *supra,* at 8-9 (providing an example that peer-reviewed articles in scholarly journals that have provoked widespread commentary or received notice from others working in the field, or entries (particularly a goodly number) in a citation index which cite the individual's work as authoritative in the field, may be probative of the significance of the person's contributions to the field of endeavor).

[5] Although we discuss a sampling of letters, we have reviewed and considered each one.

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

[7] *Id.* at 9. *See also Kazarian*, 580 F.3d at 1036, *aff'd in part*, 596 F.3d at 1115 (holding that letters that repeat the regulatory language but do not explain how an individual's contributions have already influenced the field are insufficient to establish original contributions of major significance in the field).

For the reasons discussed above, considered both individually and collectively, the Petitioner has not shown that he has made original contributions of major significance in the field.

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 it relates to a leading role, the evidence must establish that the alien is or was a leader. A title, with appropriate matching duties, can help to establish if a role is or was, in fact, leading.[8] Regarding a critical role, the evidence must demonstrate that an alien 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.[9]

The Petitioner indicates eligibility for this criterion based on his role at [redacted] and submits a letter from [redacted] former co-worker at [redacted].[10] Specifically, the Petitioner asserts that he "built a variety of advanced computing platforms that reduced costs and increased revenues to such a high degree that the company was purchased by [redacted] in 2018 for [redacted]" However, [redacted] did not make the claim that the Petitioner's role and contributions to [redacted] resulted in [redacted]s purchase of [redacted]

Further, [redacted] stated that the Petitioner "played a critical role" and indicated that he worked with the Petitioner for the "incubation team" as his delivery lead. [redacted]s letter does not show that the Petitioner held a leadership position, nor did the Petitioner demonstrate where he placed in the hierarchy of [redacted] as a member of the "incubation team." The Petitioner, for example, did not compare his role to the other positions within [redacted] As such, the Petitioner did not establish that he performed in a leading role for [redacted]

In addition, although [redacted] described the Petitioner's various projects and indicated their results, he did not elaborate and explain how they were essential to [redacted]'s outcomes or activities.[11] For instance, while [redacted] stated that "[t]his approach has cut down the operational cost by around 90%," and "[t]his approach on using [redacted] reduced the deployment time from one day in [redacted] to only 30 minutes in [redacted]," he did not articulate how they crucially impacted [redacted]'s functioning or were vital to its operation.

Moreover, [redacted] indicated various projects that were either put aside or never fully came to fruition. For example, "[a]lthough this project did not go [into] production, [the Petitioner] has built

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

[9] *Id.*

[10] The Petitioner argues that "[a]t page four of the Director's decision, it is stated that 'a letter from [redacted] and an article published by [redacted].' could not be located. However, these documents were submitted to the [Director] in response to the . . . notice of intent to deny." The record does not reflect that the Petitioner provided this document to the Director.

[11] *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).

a beta version quickly with a single-agent to showcase the idea to senior management and get their approval for the project," and "[t]his architecture would save some cost further, however, due to the amount of effort that would take to go serverless, it has been set aside for later in the road map." Here, the Petitioner did not show how projects that were never implemented influenced [ ]'s business activities in a critical way. [ ] also claimed that the Petitioner "saved 156,000 USD, which corresponds to 90% of annual saving (2018) by our team." However, [ ] did not explain the importance or significance of the team's savings to [ ]'s operation.

Accordingly, the Petitioner did not demonstrate that he performed in a leading or critical role for [ ].

> *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).

In order to meet this criterion, a petitioner must demonstrate that his salary or remuneration is high relative to the compensation paid to others working in the field.[12] The Petitioner claims eligibility for this criterion based on his salary with [ ] as a principal platform engineer. On appeal, the Petitioner submits a screenshot from flcdatacenter.com regarding level 1 to 4 wages for computer programmers in the [ ] Region of California."[13] According to the Petitioner's job offer letter, paystubs, and tax documentation previously submitted, both his address and [ ]s address were located in the New York area.[14] Here, the Petitioner does not explain how wage data from California relates to New York.[15]

Moreover, the Petitioner compares the salaries of computer programmers to his salary as a principal platform engineer. He did not establish that he commands a high salary in relation to other principal platform engineers. Both precedent and case law support this application of 8 C.F.R. § 204.5(h)(3)(ix). *See Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994) (considering a professional golfer's earnings versus other PGA Tour golfers); *see also Skokos v. U.S. Dept. of Homeland Sec.*, 420 F. App'x 712, 713-14 (9th Cir. 2011) (finding salary information for those performing lesser duties is not a comparison to others in the field); *Grimson v. INS*, 934 F. Supp. 965, 968 (N.D. Ill. 1996) (considering NHL enforcer's salary versus other NHL enforcers); *Muni v. INS*, 891 F. Supp. 440, 444-45 (N. D. Ill. 1995) (comparing salary of NHL defensive player to salary of other NHL defensemen).

In addition, Level 1 wage relates to entry level employees, while Level 4 wages relate to fully competent employees.[16] The Petitioner did not show that he commands a high salary in relation to other principal platform engineers rather than to the average salaries of fully competent computer programmers.

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[12] *See* USCIS Policy Memorandum PM-602-0005.1, *supra*, at 11.

[13] The Petitioner contends that "[a]t page four of the Director's decision, it is stated that 'the record lacks evidence comparing your earnings to others in the field. However, these documents were submitted to the [Director's] . . . notice of intent to deny." The record does not reflect that the Petitioner provided this document to the Director.

[14] According to screenshots from [ ] submitted, [ ] entered an agreement to purchase [ ] after the filing of the petition.

[15] *Id.* (instructing that the burden is on the petitioner to provide appropriate evidence and examples may include, but are not limited to, geographical or position-appropriate compensation surveys and organizational justifications to pay above the compensation data).

[16] *See* https://www.flcdatacenter.com/download/NPWHC_Guidance_Revised_11_2009.pdf, accessed on September 21, 2020.

For these reasons, the Petitioner did not establish that he fulfills this criterion.

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 conclusion 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) 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). Although the Petitioner has reviewed manuscripts and authored scholarly articles, the record does not contain sufficient evidence establishing that he is among the upper echelon in his field.

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.