U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 13951115

Date: FEB. 26, 2021

Appeal of Nebraska Service Center Decision

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

The Petitioner, a computer software and hardware development business, seeks to classify the Beneficiary, a software development engineering manager, 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 although the Beneficiary satisfied at least three of the initial evidentiary criteria, as required, the Petitioner did not show the Beneficiary's sustained national or international acclaim and demonstrate that he is among that small percentage at the very top of the field of endeavor.

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,

(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) (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). This two-step analysis is consistent with our holding that the "truth is to be determined not by the quantity of evidence alone but by its quality," as well as the principle that we examine "each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true." *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

II. ANALYSIS

A. Evidentiary Criteria

Because the Petitioner has not claimed or established that the Beneficiary has received a major, internationally recognized award, the Beneficiary must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Director determined that the Petitioner met four of the claimed evidentiary criteria relating to original contributions at 8 C.F.R. § 204.5(h)(3)(v), scholarly articles at 8 C.F.R. § 204.5(h)(3)(vi), leading or critical role at 8 C.F.R. § 204.5(h)(3)(viii), and high salary at 8 C.F.R. § 204.5(h)(3)(ix).

Although we do not concur with the Director's decision regarding the high salary criterion, the record reflects that the Beneficiary satisfies three of the evidentiary criteria.[1] As such, we will evaluate the totality of the evidence in the context of the final merits determination below.[2]

[1] The Petitioner claimed the Beneficiary's eligibility for the high salary criterion based on his current salary as a software development engineering *manager*. However, the Petitioner compared the Beneficiary's salary to the salaries of non-managerial software developers and did not establish that the Beneficiary commands a high salary in relation to other managerial software developers. 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).

[2] *See* USCIS Policy Memorandum PM 602-0005.1, *Evaluation of Evidence Submitted with Certain Form I-140 Petitions;*

B. Final Merits Determination

As the Petitioner submitted the requisite initial evidence, we will evaluate whether the Petitioner has demonstrated, by a preponderance of the evidence, the Beneficiary's sustained national or international acclaim,[3] that he is one of the small percentage at the very top of the field of endeavor, and that his achievements have been recognized in the field through extensive documentation. In a final merits determination, we analyze a beneficiary's accomplishments and weigh the totality of the evidence to determine if his successes are sufficient to demonstrate that he has extraordinary ability in the field of endeavor. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20.[4] In this matter, we determine that the Petitioner has not shown the Beneficiary's eligibility.

The record reflects that the Beneficiary received a bachelor of engineering from the University of [redacted] in 2000 and a master of science from [redacted] University in 2004. The Petitioner provided its original job offer letter showing the Beneficiary's starting position as an iOS location tech software engineer in January 2012 and another letter confirming the Beneficiary's promotion to a senior manager in 2017. According to the Beneficiary's curriculum vitae, he has also been employed with [redacted] as a senior engineer since August 2007. In addition, he worked as a software engineer at [redacted] from 2004 – 2007 and held research assistant positions while attending [redacted] University from 2000 – 2004. Besides the Beneficiary's authorship of a few papers over 15 years ago, the filing concentrates almost entirely on the Beneficiary's employment with the Petitioner for the past 6 years. The record, however, does not demonstrate that the Beneficiary enjoys a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990).

As discussed further below, the Beneficiary made contributions while working for the Petitioner and simultaneously performed in a critical role. In describing and summarizing the Beneficiary's contributions and roles, [redacted] senior director of sensitivity and connectivity for the Petitioner, stated:

> The Positioning team [for the Petitioner] was already well aware of the challenges plaguing 9-1-1. Starting in 2014, [the Beneficiary] led the development and commercialization of [the Petitioner's] [redacted] technology. [redacted] uses on-device algorithms and sensors to compute an emergency caller's location on the user's device more accurately, quickly, and reliably than traditional carrier-network-centric approaches. [The Beneficiary] also worked closely

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Revisions to the Adjudicator's Field Manual (AFM) Chapter 22.2, AFM Update AD11-14 13 (Dec. 22, 2010), https://www.uscis.gov/policymanual/HTML/PolicyManual.html (providing that objectively meeting the regulatory criteria in part one alone does not establish that an individual meets the requirements for classification as an individual of extraordinary ability under section 203(b)(1)(A) of the Act).

[3] *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 14 (stating that such acclaim must be maintained and providing *Black's Law Dictionary's* definition of "sustain" as to support or maintain, especially over a long period of time, and to persist in making an effort over a long period of time).

[4] *Id.* at 4 (instructing that USCIS officers should then evaluate the evidence together when considering the petition in its entirety to determine if the petitioner has established by a preponderance of the evidence the required high level of expertise of the immigrant classification).

with the wireless carriers to demonstrate the superiority of [redacted] over the carriers' own solutions, and in 2015, a mere few months after the FCC's [Federal Communications Commission] order, launched [redacted] in the United States . . . .

. . . .

Through 2016 and 2017, [the Beneficiary] and his team were instrumental in enabling the successful launches of [redacted], the first mass-market [redacted] and [redacted] the first mass-market [redacted] connectivity. In addition to bringing the benefits of [redacted], and [redacted] to these products, [the Beneficiary] and his team also contributed to [the Petitioner's] [redacted] feature, which allows callers to reach emergency services and share their location with public safety and designated emergency contacts, even when they are unable to physically dial an emergency number . . . .

. . . .

In 2018, [the Beneficiary's] team launched [redacted] to bring the benefit of [the Petitioner's] [redacted] technology to emergency callers in the United Kingdom, New Zealand, and 5 other European countries. Today, [redacted] is available on [redacted] and [redacted] in over 16 countries and provides life-saving location data for over 200,000 calls daily.

In that same year, [the Beneficiary's] team also developed [redacted] which uses a Next Generation 9-1-1 data pipeline from [redacted], a New York startup, to make accurate [redacted] data available quickly and securely to the 9-1-1 center handling the call . . . .

. . . .

Also in 2018, [the Beneficiary] and his team worked closely with [redacted], [redacted], and [redacted] teams at [the Petitioner] to define the [redacted] experience on the [redacted]. When enabled, the [redacted] can detect a "hard fall" and automatically call emergency services. Based on [redacted] team's inputs, [redacted] Watch is designed to play an automated "voice over" message informing the 9-1-1-telecommuter of the nature of the call and the caller's precise location . . . .

. . . .

[The Beneficiary] leveraged his deep knowledge of [redacted], emergency services, and [redacted] infrastructure and protocols, to devise a novel mechanism to convey the precise [redacted] location from a user's device to the network even before an emergency call is connected. This technique, called [redacted], enables carrier networks to use the caller's exact location, instead of the remote location

> of a connected cell-tower, to instantaneously route the call to the relevant 9-1-1 center . . . .
>
> [The Beneficiary] has also tirelessly championed the use of precise [redacted] location to route emergency text messages, often referred to as [redacted], to the appropriate 9-1-1 center. This capability is particularly relevant to the Accessibility community and to users who might be unable to verbally request assistance . . . .

The record also includes recommendation letters from others echoing [redacted]'s praises of the Beneficiary's achievements for the Petitioner. For instance, [redacted] director of regulatory engineering and technology development for [redacted] detailed that the Beneficiary "was critical in the development of [the Petitioner's] [redacted] technology," and "[the Beneficiary] and his team were also able to dramatically reduce the typical response time for many emergency location sessions to under 10 seconds." Further, [redacted] director of technology and compliance for [redacted] indicated that "[the Beneficiary] led the team that worked closely with [redacted] to prepare [redacted] which allows carrier networks to use the caller's exact location to determine the most relevant 9-1-1 call center to route the user's voice call or text message to." In addition, [redacted] CEO for the [redacted], stated that "[the Beneficiary] and his team worked with the national U.S. carriers to make [redacted] available on [the Petitioner's] devices starting in 2015, and have since proven its ability to meet, and in some cases exceed, the 2021 horizontal location requirements in independent industry tests."

Although the letters praise the Beneficiary's recent work, the Petitioner did not establish how they demonstrate the Beneficiary's sustained national or international acclaim. *See* section 203(b)(1)(A)(i) of the Act and 8 C.F.R. § 204.5(h)(3). The letters focus on the Beneficiary's immediate work without showing that the Beneficiary has enjoyed a career of acclaimed work in the field, placing him among that small percentage at the very top of the field of endeavor. *See* H.R. Rep. No. 101-723 at 59 and 8 C.F.R. § 204.5(h)(2). The record is void of the Beneficiary's professional accomplishments with any other employers even though his employment in the field spans approximately 20 years. The commentary for the proposed regulations implementing section 203(b)(1)(A)(i) of the Act provide that the "intent of Congress that a very high standard be set for aliens of extraordinary ability is reflected in this regulation by requiring the petitioner to present more extensive documentation than that required" for lesser classifications. 56 Fed. Reg. 30703, 30704 (July 5, 1991).

Likewise, the Petitioner also provided documentation showing: the Beneficiary and others listed as inventors on nine patents from 2016-2019, the Beneficiary's attendance at an [redacted] Forum 2019, and a request for a presentation at the [redacted] Working Group Australia New Zealand in 2017. The Petitioner, however, did not demonstrate that the Beneficiary garnered significant or widespread attention from these events or explain how they reflect the Beneficiary's sustained national or international acclaim, indicating an individual in the upper echelon of his field. *See* section 203(b)(1)(A)(i) of the Act and 8 C.F.R. §§ 204.5(h)(2) and (3). The Petitioner, for example, did not compare the Beneficiary's patents to others in the field or show how attending a single forum or speaking at a solo working group establishes the recognition of the Beneficiary as among that small percentage who has risen to the very top of the field. *See* 8 C.F.R. § 204.5(h)(2).

Regarding his publication history, the Petitioner presented evidence showing that the Beneficiary authored five papers during his graduate work at [redacted] University from 2003 – 2004. However, the Petitioner did not demonstrate that the Beneficiary's publication record of five articles over 15 years ago is consistent with having a career of acclaimed work and sustaining national or international acclaim.[5] The Petitioner did not submit evidence showing the significance of the Beneficiary's authorships or how his overall publications compare to others who are viewed to be at the very top of the field. *See* H.R. Rep. No. at 59, section 203(b)(1)(A)(i) of the Act, and 8 C.F.R. § 204.5(h)(3). Without evidence that sets the Beneficiary apart from others in his field, such as evidence that he has a consistent history of publishing articles in prestigious journals, the Petitioner has not shown that the Beneficiary's publications reflect being among the small percentage at the very top of his field. *See* 8 C.F.R. § 204.5(h)(2) and 56 Fed. Reg. at 30704.

Moreover, the citation history or other evidence of the influence of the Beneficiary's written work can be an indicator to determine the impact and recognition that his publications have had on the field and whether such influence has been sustained. For example, numerous independent citations for an article authored by the Beneficiary may provide solid evidence that his work has been recognized over a period of time. Such an analysis at the final merits determination stage is appropriate pursuant to *Kazarian,* 596 F. 3d at 1122. The Petitioner submitted evidence indicating that others have cited to his articles 22 times. While the citation of the Beneficiary's written work shows that a few have noticed it, the Petitioner has not established that such citations are sufficient to demonstrate a level of interest in the field commensurate with sustained national or international acclaim. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(3). In addition, the Petitioner has not demonstrated that the limited citations to the Beneficiary's work represent attention at a level consistent with being among that small percentage at the very top of his field. *See* 8 C.F.R. § 204.5(h)(2) and 56 Fed. Reg. at 30704.

Beyond the three criteria that the Beneficiary satisfied, we consider additional documentation in the record in order to determine whether the totality of the evidence demonstrates eligibility. For the reasons discussed below, the evidence does not establish that the Beneficiary has sustained national or international acclaim and is among the small percentage of the top of his field.

The Petitioner indicated that the Beneficiary received [redacted]'s "President Award for Commitment to [redacted] Industry" in 2019. Besides letters explaining why [redacted] bestowed the award upon the Beneficiary, the Petitioner did not demonstrate the recognition or significance of the recent award on a national or international scale, contributing to the Beneficiary's sustained national or international acclaim. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(3). Further, the Petitioner did not establish that the Beneficiary's immediate receipt of a single award reflects a career of acclaimed work in the field, placing him among that small percentage at the very top of the field of endeavor. *See* H.R. Rep. No. 101-723 at 59 and 8 C.F.R. § 204.5(h)(2).

Finally, as previously indicated, the Petitioner did not establish that the Beneficiary commanded earnings commensurate with sustained national or international acclaim. *See* section 203(b)(1)(A) of

[5] *See also* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 13 (providing that publications should be evaluated to determine whether they were indicative of being one of that small percentage who has risen to the very top of the field of endeavor and enjoying sustained national or international acclaim).

the Act and 8 C.F.R. § 204.5(h)(3). The Petitioner did not show that the Beneficiary's wages are tantamount to an individual who is among that small percentage at the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2). For example, the Petitioner did not demonstrate how the Beneficiary's salary compared to others at the very top of his field, or that he received notoriety or attention based on his earnings separating himself from others in the field or placing him in the upper echelon. In addition, the Petitioner did not document the Beneficiary's high earnings from other employers, showing a consistent history and recognition from the field of the Beneficiary's extraordinary ability. *See* 56 Fed. Reg. at 30704.

The record as a whole, including the evidence discussed above, does not establish the Beneficiary's eligibility for the benefit sought. Here, the Petitioner seeks a highly restrictive visa classification for the Beneficiary, intended for individuals already at the top of their respective fields, rather than those progressing toward the top. Even major league level athletes do not automatically meet the statutory standards for classification as an individual of "extraordinary ability." *Price*, 20 I&N Dec. at 954. While the Petitioner need not establish that there is no one more accomplished to qualify for the classification sought, the record is insufficient to demonstrate that the Beneficiary has sustained national or international acclaim and is among the small percentage at the top of his field. *See* section 203(b)(1)(A)(i) of the Act and 8 C.F.R. § 204.5(h)(2).

III. CONCLUSION

For the reasons discussed above, the Petitioner has not demonstrated the Beneficiary's 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.