U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 11283620

Date: JAN. 29, 2021

Appeal of Nebraska Service Center Decision

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

The Petitioner, a director of engineering for an e-commerce company, seeks classification as an individual 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 satisfied only two of the ten initial evidentiary criteria for this classification, of which he must meet at least three. 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, we conclude that 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 record reflects that the Petitioner is currently employed as a director of software engineering with [redacted], where he has worked in H-1B nonimmigrant status since October 2015. He joined with 15 years of progressive experience in the software engineering field, most recently as an assistant vice president for [redacted], where he worked from 2014 to 2015. The Petitioner has a bachelor of technology degree from [redacted] University in India.

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 ten alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Petitioner claims to have met three criteria, summarized below:

- (v), Original contributions of major significance;
- (viii), Leading or critical role for distinguished organizations or establishments; and
- (ix), High salary or other significantly high remuneration in relation to others in the field.

The Director found that the Petitioner met the criteria pertaining to leading or critical roles and high salary. On appeal, the Petitioner maintains that he also meets the original contributions criterion and asserts that the Director did not properly weigh the submitted evidence of his business and engineering related contributions and the significance of these contributions in his field.

We have reviewed all the evidence in the record and conclude that it does not demonstrate that the Petitioner satisfies the requirements of at least three criteria. The Petitioner meets only the two criteria granted by the Director. We will discuss the remaining claimed criterion below.

Evidence of the individual'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).

To satisfy this criterion, the Petitioner must establish that not only has he made original contributions but that they have been of major significance in the field. Major significance in the field may be shown through evidence that his original contributions have been widely accepted and implemented throughout the field, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance in the field.[1]

On appeal, the Petitioner claims that he provided ample evidence of his original contributions to the software engineering field and asserts that the Director failed to discuss the detailed information contained in letters from his current and former employers, submitted at the time of filing. The record also includes two expert opinion letters from university professors in the computer science field.

With respect to the Petitioner's contributions during his tenure at [redacted] he provided a letter from [redacted]'s Senior Vice President - Head of Digital Product Strategy. [redacted] indicates that he previously served as Head of Product Development within [redacted]® business division, noting he frequently interacted with the Petitioner, who he describes as "the lead development engineer" within the division and "one of the firm's most important technical contributors to the broader suite of core innovative products for our department." He describes [redacted] as a "single integrated messaging and connectivity engine" that was "specially designed for asset managers, insurance companies, banks . . . and other technology platforms."

[redacted] goes on to describe some of the Petitioner's contributions to the division, noting that he "engineered and developed a remarkable and outstanding multi-bank event management and notification workflow solution designed to simplify the most challenging corporate actions lifecycle processes." He explains the complexity of the problem addressed by this workflow solution, and notes that the system "adds a strategic advantage" compared to "traditional systems." He describes its features, and states that there are "no off-the-shelf software solutions available that can match these capabilities and provide this end to end workflow." [redacted] also credits the Petitioner with developing "an advanced configurable rule-based engine to process complex rules to handle data from several message systems" and describes the capabilities of this solution.

While this evidence demonstrates that the Petitioner made original engineering contributions to [redacted]'s [redacted]® division that benefited the company and its clients, it does not establish how such contributions to [redacted]'s products have remarkably impacted or influenced the field or industry. [redacted] praises the Petitioner's "in-depth knowledge on building scalable real time systems and his ability to lead a team to successfully [] execute on his vision to drive significant business upside" as well as his ability "to delight customers with pioneering solutions to challenging problems." He also generally states that the types of solutions the Petitioner developed "can be useful for systems and organizations that exchange data," but does not elaborate on their impact on the field. In order to establish that his contributions at [redacted] satisfy this criterion, the Petitioner must establish that his contributions have been widely implemented in the field or have otherwise been recognized for their major significance. The record does not include, for example, evidence that other companies have adopted the types of engineering solutions he helped develop during his tenure at [redacted] The plain

[1] *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/sites/default/files/USCIS/Laws/Memoranda/i-140-evidence-pm-6002-005-1.pdf.

language of the phrase "contributions of major significance in the field" requires evidence of an impact beyond one's employer and clients or customers. *See Visinscaia v. Beers*, 4 F. Supp. 3d 126, 134-135 (D.D.C. 2013). While the evidence demonstrates that the Petitioner possesses technological knowledge and skills that enabled him to solve engineering challenges faced by and its clients, 's letter does not establish how his contributions impacted the field.

In the RFE, the Director provided the Petitioner an opportunity to submit additional independent, objective evidence, beyond testimonial letters, to establish that his contributions have significantly influenced the field. The Petitioner's response to the RFE included two expert opinion letters from university professors, which we will discuss further below, and copies of previously submitted evidence. On appeal, the Petitioner now asks that we consider "several industry articles" intended to provide supplemental explanations of the impact of his work on the field. The evidence includes: (1) an October 2013 press release titled "; (2) a 2015 press release titled and (3) a 2018 press release published by *Business Insider*, which announces the company's release of .

Where, as here, a Petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). Further, even if we review this evidence along with 's letter, the record would not support a determination that the Petitioner made original contributions of major significance while employed by The 2013 press release pre-dates the Petitioner's employment with by a year and the 2018 press release post-dates his tenure by over two years. We also note that the specific products mentioned in these press releases are not referenced by in his letter. Finally, while these product releases were deemed sufficiently significant to warrant the company's issuance of a press release, the press releases alone do not demonstrate how these technologies remarkably impacted the field.

The referenced 2015 press release coincides with the Petitioner's one-year tenure with but marks the automation of 1.3 million fund orders "through the 's offshore fund platform and " over a period of three years (since 2012). However, since 's relationship with predated the Petitioner's tenure with the company, the press release alone does not establish that his contributions to the existing platform remarkably impacted the industry and such contributions were not addressed in 's letter.

The Petitioner has also provided two letters that directly address his contributions during his tenure at . is described in the record as retailer of sports merchandise of major professional sports leagues and for over 300 collegiate and professional team properties. , the company's Chief Technology & Product Officer, credits the Petitioner with developing new capabilities for its Platform which have significantly contributed to the company's revenue growth. He explains that the Petitioner's unique combination of software engineering skills enabled his design and development of and , which have enabled the company to offer fans gear

[redacted] and other major sports franchises. He states that "80+ business managers working on 300+ sites use these tools on a regular basis."

[redacted] further describes these tools in considerable detail, noting that few engineers have the diverse skill set required to meet the company's technological challenges, and attributing [redacted] significant sales growth to the Petitioner's enhancements of its [redacted] platform. He also discusses the Petitioner's work on the platform's [redacted] system, noting that he developed a [redacted] system" which he describes as a "unique solution which very few companies across the world have attempted." [redacted] explains that the [redacted] system the Petitioner built allows [redacted] payment systems to operate in a fall back mode and [redacted] during primary gateway down times."

The Petitioner also provided a letter form [redacted], Vice President of Product Technology at [redacted], who states that he leads product management for all aspects of [redacted] cloud commerce platform. [redacted] like [redacted] highly praises the Petitioner's engineering talent and leadership abilities and discusses his contributions to the company's [redacted] platform. He highlights the [redacted] solution (noting the Petitioner solved a "problem that every payment accepting [redacted] faces"), a [redacted] System (a security feature that detects anomalies in user activities), and the Petitioner's integration of [redacted] risk analysis engine to protect the platform from abuse.

The contributions described by [redacted] and [redacted] are novel and innovative in that they fill the unique needs of the [redacted] platform, and their letters establish that the Petitioner has performed in a critical capacity for the company. However, the record does not establish how such contributions have had a significant impact or influence on the [redacted] software technology field outside of the company. The record does not establish, for example, that the Petitioner's enhancements to the [redacted] platform have generated widespread commentary or discussion in the field or that other [redacted] companies have modeled their [redacted] platforms on enhancements the Petitioner made to the [redacted] platform.

A letter from [redacted] a business architect with [redacted], also discusses the Petitioner's work in the [redacted] field. [redacted] describes the Petitioner as "an avid open source contributor for many public open-source software libraries" and that states his work "is very significant to a large scale platform which deals with data." He credits the Petitioner with: designing and implementing a scalable platform called [redacted] to power business analytics; designing dynamic configuration capabilities and an intelligent [redacted] that allow an application/website behavior to be changed dramatically; developing tracking software that can benefit "many small scale-to-medium [redacted] companies"; and introducing speedy checkout to [redacted] checkout payment flows. With respect to [redacted] payments, [redacted] states that the "integration models and interfaces built by [the Petitioner] are significantly helping [redacted] companies the way [*sic*] customers can make payments on any [redacted] websites in a more secure and simplified way." However, he does not offer any specific examples, and the record does not contain supporting evidence, of how these technologies have been adopted by any companies other than the Petitioner's own employer. Simply stating that the Petitioner developed novel solutions that could be useful to other organizations is not

sufficient to show that his work has already proven to be remarkably impactful or influential in the field.

Finally, we have considered the expert opinion letters of two professors of computer science. 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.*

In his letter, [redacted] of [redacted] University summarizes the letters provided by [redacted] and [redacted] and the contributions the Petitioner made to [redacted] and [redacted]. He concludes that his contributions are beneficial to the companies he has worked for and "will have lasting effects on the industry as a whole." He states that "[t]his is evident based on a simple comparison of similar platforms at other companies" noting that some features the Petitioner developed at [redacted] are "some of the first to be contained in technologies of this nature and have the potential to be patented." Although his letter supports a finding that the Petitioner's contributions are novel, he does not state that those contributions have already impacted or influenced the broader industry.

[redacted] Professor and Chair of Computer Science at University [redacted], indicates that the Petitioner "has made major original business contributions in the form of groundbreaking technology innovations in the field of [redacted]." Like [redacted], he discusses the letters provided by the Petitioner's employers, noting that the letters establish his ability to develop specific technology solutions that "improve the efficiency and overall profitability of standard processes," and noting that such solutions have "far-reaching significance." He further states that such achievements "are far outside the ken of the vast majority of developers and software engineers, and as such extend their influence into the industry at large." However, these statements are general and do not specify how the Petitioner's contributions have been of "major significance" in the field within the meaning of 8 C.F.R. § 204.5(h)(3)(v).

[redacted] also highlights the Petitioner's work on [redacted] at [redacted] noting that "this contribution extends far outside of its immediate application" at his employer. He notes that [redacted] is a "cutting edge security solution" used in [redacted] and retail banking, and states that the Petitioner's [redacted] solution stands out as among the leading advancements in this area in the short time since the development of the [redacted] technology" and "bears major significance for the overall [redacted] industry" by "adding to the growing number of technical improvements in the area of [redacted] and increasing competition in the same." Although [redacted] refers to the Petitioner's work on [redacted] payment system as a "leading advancement" that has added to the incremental innovations in a growing area of technology, the record does not contain supporting evidence or specific examples showing that this advancement has already extended "far outside its immediate application" at [redacted] such that it could be deemed an original contribution of major significance in the field.

In summary, the submitted letters do not contain specific, detailed information explaining the unusual influence or impact his work at [redacted] and [redacted] 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.[2] On the other hand, letters that lack specifics do not add value, and are not considered to be probative evidence that may form the basis for meeting this criterion.[3] 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).

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.

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 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).

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.

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