U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 17774594

Date: JUL. 14, 2021

Appeal of Texas Service Center Decision

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

The Petitioner, a tax accountant, 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 Texas Service Center denied the petition, concluding that while the Petitioner met the initial evidence requirement for the requested classification, the record did not establish that he enjoyed sustained national or international acclaim and was among the small percentage of those at the top of his field.

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) 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

At the time of filing, the Petitioner was a vice chair and international tax partner with [redacted] where he indicates that he has been employed in several positions for more than 30 years. He earned an MBA from the University [redacted] in 2017, and also holds degrees from the University [redacted] and the University [redacted] The Petitioner states that if his petition is granted, he intends to open his own international tax consulting firm in [redacted] focusing on Chinese-owned technology companies in the area.

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). The Director found that the Petitioner met three of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), relating to published material about him and his work, his authorship of scholarly articles in his field, and his leading role for distinguished organizations. On appeal, the Petitioner asserts that he also meets the evidentiary criteria relating to his high remuneration in relation to others in the field. After reviewing all of the evidence in the record, we agree with the Director's conclusions regarding his leading roles for the [redacted] and [redacted] as well as his authorship of scholarly articles in the business field. However, as will be briefly discussed below, upon review we do not agree that the record includes published material about the Petitioner relating to his work, and we conclude that the evidence is sufficient to show that his remuneration is significantly in relation to others in his field.

> *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)

In order to establish that they meet this criterion, a petitioner must show that the evidence meet each of its elements, which in part require both that the published material be about them and that it relates

to their work in the field for which classification is sought. Here, the Petitioner initially submitted several articles in which he is quoted regarding tax and international business issues, which include articles published in *The New York Times*, *Wall Street Journal*, and *South China Morning Post*. In responding to the Director's request for evidence (RFE), which stated that none of the articles submitted were about him, the Petitioner argued that since the nature of his work is to provide tax advice, "which invariably includes his views and opinions," all of these articles met the plain language of this criterion. Although the Director ultimately concluded that the evidence submitted in support of this criterion was sufficient, he did not provide an analysis of this evidence in his decision.

As noted above, each of the articles in the record includes at least one sentence in which the Petitioner provides his expert opinion regarding the subject of the article. The article appearing in the *Wall Street Journal*, for example, is about the acquisition by Chinese companies of companies in other countries, and includes a statement from the Petitioner about such deals with which he is involved. Although he and his employer are identified, this material is not about him. Even articles which consist almost entirely of interviews of the Petitioner, which appeared in the *South China Morning Post* and on the website of the [redacted], similarly identify him and his employer, but do not include details about his career history or accomplishments. Instead, these materials are about the Chinese tax system and infrastructure investments, respectively, and thus do not meet this regulatory criterion. *See, e.g., Negro-Plumpe v. Okin,* 2:07-CV-820-ECR-RJJ at *1, *7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles about a show are not about the actor). Accordingly, we disagree with the Director's conclusion and withdraw that part of his decision.

> *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)

Initial evidence of the Petitioner's remuneration consisted of a letter from [redacted] which stated that his total after-tax income from June 2017 to May 2018 was HK$ 12,224,019, and that his "drawing" in the period from June 2018 through February 2019 was HK$ 568,000 per month. In addition, to demonstrate that this remuneration was significantly high in relation to others in his field, the Petitioner submitted two salary surveys showing annual salaries for what he asserts are similar positions in his field of between HK$ 1million and HK$ 2 million. However, we note that the *Robert Walters Salary Survey 2018* shows that in Hong Kong, the annual salary for a Managing Director in the "Investment Banking" category, which includes the Petitioner's field of mergers and acquisitions, ranges between HK$ 2.4 million to HK$ 4.7 million. In addition, the *Michael Page Hong Kong Salary Benchmark 2019* lists the annual salary range for the position of Regional Head of Tax in the "Back Office – Tax" category ranges between HK$ 2million and HK$ 3 million.

In response to the Director's RFE, the Petitioner submitted additional evidence of his earnings, including screen shots of his monthly earnings statements between July 2017 and June 2019. These show his receipt of a monthly drawing of HK$ 484,666.67 each month under one employee number, and an additional monthly drawing of HK$ 83,333.33 in most months under a different employee number. These figures confirm those regarding the monthly salary from the initial letter, with an annual salary of about HK$ 6.8 million. In addition, he also submitted statements showing profit-sharing payments of approximately HK$ 2.87 million in 2018 and HK$3.1 million in 2019. For purposes of comparison, a report from payscale.com indicated that the average salary for a partner in an accounting firm in Hong Kong was HK$ 3.7 million, with 75% earning less than HK$ 5 million.

This evidence demonstrates that the Petitioner's salary was high, and his total remuneration significantly high, in relation to other similarly situated accounting professionals in 2018 and 2019. As such, we disagree with the Director and conclude that the Petitioner meets this criterion.

B. Final Merits Determination

In a final merits determination, we examine and weigh the totality of the evidence to determine whether the Petitioner has sustained national or international acclaim and 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. Here, the Petitioner has not offered sufficient evidence that he meets that standard.

The Petitioner argues on appeal that the Director did not conduct a proper final merits determination in his decision, because he only considered evidence submitted under the criteria he found that the Petitioner met, and analyzed this evidence in a piecemeal fashion without considering the totality of the record. We agree, as USCIS policy following the *Kazarian* decision clearly indicates that all of the evidence in the record should be considered together in this second part of the analysis.[1] We will therefore conduct a final merits analysis in accordance with this policy.

The evidence shows that the Petitioner has spent almost his entire career with a single employer in China, although his resume indicates that he spent a brief period working in the United States for an affiliated office. He lists several roles he has played for [redacted] including international tax partner and national mergers and acquisitions leader, and these titles are confirmed in media reports in which he is quoted for his expert opinion and elsewhere in the record. Although a letter from [redacted] confirms that he currently holds the position of [redacted] for the company, the record does not include evidence explaining his duties in this role or any of the others he has held. We agree with the Director that this evidence is sufficient to show that he has played a leading role, but it does not describe his specific performance and achievements in this role for [redacted] Vague statements that he has "interacted with senior business leaders, government officials and the media and press" and that he is "Hong Kong's top provider of professional advice and consulting services in both U.S. and China tax matters" are not sufficient to demonstrate how this work has elevated his status within the broader field of business, or his specialization in taxation. The Act requires "extensive documentation" that a petitioner's achievements have been recognized in the field, and the record regarding the Petitioner's achievements at [redacted] does not meet that requirement.

Whether as an official part of his duties with [redacted] or not, the Petitioner also submitted evidence that he has written articles on Chinese and U.S. tax issues that were published in professional magazines and journals. On appeal, the Petitioner asserts that the submitted materials, published between 2013 and 2018, represent only his most recent published work, and that it was the Director's burden to request the submission of additional articles if he felt that the record was insufficient to support the Petitioner's eligibility for the requested classification. We first note that it is the Petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act,

[1] *See* 6 USCIS Policy Manual F.2(B)(2), https://www.uscis.gov/policymanual (stating 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 for the immigrant classification).

8 U.S.C. § 1361; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012). In addition, beyond acknowledging that the Petitioner's initial submission included evidence sufficient to meet the criterion at 8 C.F.R. § 204.5(h)(3)(vi), the Director's request for evidence (RFE) also reminded him that eligibility as an individual of extraordinary ability is not established by meeting the minimum of three of the evidentiary criteria alone, and explained that the response should also show that he meets the high standards of the requested immigrant classification. Therefore, if he felt that evidence of the additional articles that he authored before 2013 would help to establish his eligibility, the Petitioner should have submitted that evidence.

The evidence that is in the record includes several articles that the Petitioner co-authored with colleagues from [redacted] published in magazines and journals including *The Bulletin*, Bloomberg BNA *Tax Planning International Review*, *China Tax Intelligence* and *Tax Notes International*. In his decision, the Director stated that some of these articles did not meet the relevant criterion, in particular those published in *The Bulletin*, and that the record lacked evidence that others in the field had cited to these articles. As pointed out on appeal, the Petitioner is not a researcher, and does not work in a field where authors of such material typically cite to each other's written works. However, the Petitioner's assertion that authorship of scholarly articles in his field is rare is not supported by evidence in the record, nor does he suggest an alternative means for measuring the extent to which the evidence of his published work supports his eligibility as an individual of extraordinary ability.

Further, the record does not include evidence about the publications in which these articles were published beyond the copies of the journal covers and articles. For instance, the covers of the editions of *The Bulletin* indicate that it is published and/or distributed by the '[redacted], but no information is provided regarding the circulation or readership of this magazine, or its prestige within the Chinese or international taxation community. Another article was published in a newsletter of the [redacted]' which according to the website at the address printed on the cover is the [redacted] but the record does not include information about whether this newsletter would have influence or reach beyond the members of this organization. While the titles of some of the other publications suggest that they may have had a broader readership, and thus provided a wider platform for distribution of the Petitioner's views and expertise, again the record lacks such evidence. Thus, although the authorship of these articles shows the Petitioner's expertise in the area of international taxation, as well as a certain level of acknowledgment of that expertise by the editors and publishers of the journals in which they were published, it does not set him apart from his co-authors and others who are published in these and other media. Again, the Act requires extensive documentation of recognition in a petitioner's field, and the evidence of the Petitioner's published work does not rise to that level.

In addition to this evidence of materials authored by the Petitioner, the record also includes the previously discussed evidence of published materials which include quotations from him on issues of taxation, investment and mergers and acquisition. The Petitioner asserts on appeal that the interview of him on two [redacted] segments and his contributions to articles in *The New York Times*, *Wall Street Journal* and *South China Morning Post*, among others, "automatically places him in an elite category at the top of his field in Hong Kong." We acknowledge that the appearance of his expert opinions, in most cases brief snippets among those of others, in well-known media such as these shows that his expertise in his field is acknowledged and sought after. However, even if this statement was proven

to be correct, this does not accurately reflect the requirements for eligibility as an individual of extraordinary ability, as placement at the very top of the field of endeavor is not limited by geography. Although the single articles from *The New York Times* and *Wall Street Journal*, and the two interviews in segments aired on [redacted] suggest that the Petitioner's expertise has been recognized beyond the borders of Hong Kong and even China, much of the remainder of the evidence consists of articles published in primarily locally focused media, such as the *South China Morning Post*, or in media about which little or no information exists in the record, such as two articles in a magazine identified in its header as *A Plus*. The totality of this evidence does not help to show that the Petitioner has received acclaim for his expertise at the national or international level over a sustained period.

Likewise, the evidence of the Petitioner's salary and total remuneration in 2018 and 2019, together with the salary surveys and other evidence, demonstrates that in those years he was compensated at a rate that is significantly higher than average, but does not show that he has consistently been compensated at a rate which would place him amongst those at the top of his field. In addition, the evidence showing that the Petitioner was named as one of several tax experts in Hong Kong in *International Tax Review*'s [redacted] in 2009 does not set him apart from others so named, or from those taxation experts who work in other parts of the world.

Other than his work for, and associated with, [redacted] the Petitioner also submitted evidence of his long-time service with the [redacted] in several roles, most recently as its [redacted] A letter from [redacted] of the organization, describes the Petitioner's work as a board member for more than twenty years, including his involvement with its [redacted] main source of revenue, and his service on several committees including the finance and audit committee. This evidence shows that he has served as an effective leader for this well-known [redacted] organization, but the Petitioner does not suggest or establish that this work has brought him acclaim in the international tax community, or that any recognition for this work extends beyond the [redacted]

The Petitioner seeks a highly restrictive visa classification, intended for individuals 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, after analysis of the totality of the evidence, we conclude that 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 that 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.

ORDER: The appeal is dismissed.