U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 18142743

Date: SEP. 22, 2021

Appeal of Texas Service Center Decision

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

The Petitioner, a [ ] computer executive, 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 the record did not establish that the Petitioner met the initial evidentiary requirements of the classification through receiving a major, internationally recognized award or meeting at least three of the ten evidentiary criteria under 8 C.F.R. § 204.5(h)(3). 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 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). The regulation at 8 C.F.R. § 204.5(h)(4) allows a petitioner to submit comparable material if he or she is able to demonstrate that the standards at 8 C.F.R. § 204.5(h)(3)(i)-(x) do not readily apply to the individual's occupation.

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 is a technology consultant, and received his Bachelor of Engineering in Computer Science and Engineering in 2002 from [redacted] in [redacted] India. At the time of filing, he was employed by [redacted] in [redacted] Maryland as a technical architect.

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 denying the petition, the Director determined that the Petitioner fulfilled two of the initial evidentiary criteria: judging the work of others in the same or an allied field under 8 C.F.R. § 204.5(h)(3)(iv) and performing in a leading or critical role for organizations or establishments that have a distinguished reputation under 8 C.F.R. § 204.5(h)(3)(viii).

The Petitioner submitted evidence demonstrating that he performed peer reviews for the journal *IEEE Transactions on Cloud Computing*. The record also reflects that the Petitioner performed in a leading or critical role as a founding member of the [redacted] team at [redacted] an organization with a distinguished reputation. Accordingly, we agree with the Director's determination that he meets the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (viii).

On appeal, the Petitioner maintains that he meets three additional criteria relating to memberships, original contributions, and high salary, and is otherwise eligible for the classification sought. After reviewing all the evidence in the record, we conclude that the record does not support a finding that the Petitioner satisfies the requirements of at least three criteria.

> *Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as*

> *judged by recognized national or international experts in their disciplines or fields.* 8 C.F.R. § 204.5(h)(3)(ii)

In order to satisfy this criterion, the Petitioner must show that membership in the association is based on being judged by recognized national or international experts as having outstanding achievements in the field for which classification is sought.[1] For the reasons outlined below, we agree with the Director's determination that the Petitioner did not submit documentary evidence that sufficiently demonstrates that he meets this criterion.

The Petitioner asserts that he meets this criterion as a senior member of the Institute of Electrical and Electronics Engineers (IEEE). The record shows that in 2017, the Petitioner's membership in the IEEE was elevated to "Senior Member" level, which he maintains satisfies the regulatory requirements of this criterion. In response to the Director's request for evidence (RFE), the Petitioner submitted a copy of the IEEE bylaws, and argued that admission to senior membership requires "substantial responsibility or achievement." In support of this assertion, he highlighted relevant excerpts of section 1-104.03 of the bylaws, which states as follows:

> 3. <u>Senior Member</u>. The grade of Senior Member is the highest for which application may be made and shall require experience reflecting professional maturity. For admission or transfer to the grade of Senior Member, a candidate shall be an engineer, scientist, educator, technical executive, or originator in IEEE-designated fields . . . . The candidate shall have been in professional practice for at least ten years and shall have shown significant performance over a period of at least five of those years, such performance including one or more of the following:
>
> (a) <u>Substantial responsibility or achievement</u> in one or more of IEEE-designated fields; or
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> (b) Publication of papers, books, or inventions in one or more of IEEE-designated fields; or
>
> (c) Technical direction or management of important work with evidence of accomplishment in one or more of IEEE-designated fields; or
>
> (d) Recognized contributions to the welfare of the professions encompassed by one or more of IEEE-designated fields; or
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> (e) Development or furtherance of important courses in one or more of IEEE-designated fields; or
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> (f) Contributions equivalent to those of (a) to (e) in areas related to IEEE-designated fields, provided these contributions serve to advance progress substantially in IEEE-designated fields.

(Emphasis added by Petitioner).

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[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 6 (Dec. 22, 2010), https://www.uscis.gov/policymanual/HTML/PolicyManual.html (providing an example of admission to membership in the National Academy of Sciences as a Foreign Associate that requires individuals to be nominated by an academy member, and membership is ultimately granted based upon recognition of the individual's distinguished achievements in original research).

The Petitioner maintained that "substantial achievement," as contemplated by the bylaws, was no different from "outstanding achievement," noting that there appeared to be sufficient evidence to indicate "that they are equivalent in substance."

In denying the petition, the Director determined that the IEEE's stated requirements for admission as a Senior Member (professional maturity, ten years of relevant experience and "significant performance" over a period of at least five of those years) did not rise to the level of "outstanding achievements" consistent with this regulatory criterion. The Director found the Petitioner's assertions unpersuasive, and concluded that membership requirements based simply on employment and/or activity in a given field cannot satisfy the requirements of this criterion.

On appeal, the Petitioner reasserts his contention that there is no inherent difference between "substantial achievement" and "outstanding achievement." The Petitioner argues that the Director "advocated a novel policy interpretation" and did not provide authority for determining that "substantial achievement," as set forth in the bylaws, did not equate to "outstanding achievement" as contemplated by 8 C.F.R. § 204.5(h)(3)(ii).

We exercise *de novo* review of all issues of fact, law, policy, and discretion. *See Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). This means that we look at the record anew and are not required to defer to findings made in the initial decision. Furthermore, our decision may address new issues that were not raised or resolved in the prior decision. Upon review, while we acknowledge that the Director's decision could have provided additional reasoning to support its determination on this issue, we nevertheless agree with the Director's ultimate finding that the Petitioner's membership in the IEEE falls short of meeting the requirements of this criterion.

According to the IEEE bylaws, "a candidate shall be an engineer, scientist, educator, technical executive or originator in IEEE-designated fields . . . The candidate shall have been in professional practice for at least ten years and shall have shown significant performance of a period of at least five of those years." The bylaws further specify that "significant performance" can take the form of "[p]ublication of papers, books, or inventions." The Petitioner has not established that the IEEE requirements of 10 years of relevant experience in a particular field and "publication of paper, books, or inventions" rise to the level of "outstanding achievements" consistent with this regulatory criterion. Further, the Petitioner did not establish that recognized national or international experts judge the outstanding achievements for membership with IEEE.[2]

Although the bylaws also indicate that "significant performance" can include "substantial responsibility or achievement," we do not agree with the Petitioner's assertion that "substantial achievement" equates to "outstanding achievement." For instance, the evidence indicates that the IEEE has a "Fellow" membership grade that appears to align more closely with the regulatory language at 8 C.F.R. § 204.5(h)(3)(ii). Specifically, according to the submitted IEEE bylaws, Fellow membership requires "an outstanding record of accomplishments" that have "contributed importantly

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

to the advancement or application of engineering, science and technology."[3] In addition, one can apply for the Senior Member grade, whereas elevation to Fellow requires nomination and election at the highest levels of the association.

While we acknowledge that the existence of this higher-level membership grade does not automatically lead to a conclusion that the Senior Member grade does not satisfy this criterion, the evidence contained in the IEEE bylaws provides useful context regarding how the association views a prospective member's qualifications. The existence of two different elevated levels of membership with different stated requirements indicates that the IEEE does not consider the "significant performance" required for Senior membership (which includes "substantial achievement," as asserted by the Petitioner) to be equivalent to the "outstanding accomplishments" required for Fellow membership. Further, the record does not establish that prospective Senior Members are admitted only after having their achievements judged by "recognized national or international experts in the field" as required by 8 C.F.R. § 204.5(h)(3)(ii).

The record, therefore, does not demonstrate that the IEEE's standards for Senior membership rise to the level of "outstanding achievements" as contemplated by the plain language of 8 C.F.R. § 204.5(h)(3)(ii). While this membership level does not appear to be available to all professionals with 10 years of experience in the field, and some persons who are elevated to Senior Member likely exceed the minimum entry requirements, the Petitioner must establish that IEEE requires Senior Members to have "outstanding achievements" as an essential condition of membership to demonstrate that his membership satisfies the requirements of this criterion.

Based on the foregoing, the Petitioner has not demonstrated that he meets this regulatory criterion.

> *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)

The Petitioner relies on his work relating to [redacted] and his development of the [redacted] technology for [redacted] as evidence that meets this criterion. The Director determined that while his development of this technology and his advances in [redacted] constitute original contributions, the Petitioner did not demonstrate how his contributions are considered both original and of major significance in the field. On appeal, the Petitioner argues that the Director ignored critical evidence pertaining to his [redacted] technology. He notes that despite submitting media reports discussing [redacted] and its advances in the industry, the Director erroneously declined to afford this evidence sufficient evidentiary weight.

[3] The requirements to become a Fellow appear to be align much more closely with the regulatory language than the requirements for the Senior Member grade:

> 2. Fellow. The grade of Fellow recognizes unusual distinction in the profession and shall be conferred by the Board of Directors upon a person with an outstanding record of accomplishments in any of the IEEE fields of interest .... The accomplishments that are being honored shall have contributed importantly to the advancement or application of engineering, science and technology, bringing the realization of significant value to society....

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.[4] For example, a petitioner may show that his 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. The Director determined that the media reports and letters of support from the Petitioner's colleagues were insufficient to meet this criterion. We find no error in the Director's determination.

On appeal, while the Petitioner acknowledges that most of the media reports submitted, as noted by the Director, pertained to the [redacted] industry in general, he asserts that the Director did not afford sufficient evidentiary weight to an article published on www.gartner.com titled [redacted] According to the Petitioner, this article indicates that the Petitioner's employer [redacted] is the leader in [redacted] services worldwide, noting that [redacted] of the article confirms [redacted]'s position at the top of the industry, just above its competitor [redacted] The Petitioner concludes that this ranking "is a clear indication of the impact of [redacted] brought about with its unique ability for [redacted] The Petitioner also references an article published on [redacted]s own website indicating that the company is positioned as a leader in the [redacted] for worldwide [redacted] professional services for 2020.

The record must be supported by evidence that the Petitioner's contributions have already impacted the field at a significant level. While the articles referenced by the Petitioner demonstrate that his employer is a leader in the field of [redacted] there is no indication that [redacted]'s position in the industry is a direct result of the Petitioner's [redacted] technology, or that this technology has been widely impacted beyond [redacted] and its clientele. We do not doubt that the Petitioner is well-equipped to offer highly specialized [redacted] services to [redacted] and that his [redacted] technology has been beneficial to [redacted]'s position in the industry. However, regardless of the field of endeavor, the plain 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).

The record also contains letters from the Petitioner's colleagues at [redacted] regarding his original contributions in his field, which praise his achievements in [redacted], and discuss his development of the [redacted] technology. As noted by the Director, while some of these letters discuss the impact or potential impact of his contributions in broad terms, they do not establish that his original contributions are already recognized as majorly significant within his field. On appeal, the Petitioner does not address the evidentiary deficiencies in the letters as noted by the Director, nor does he contest the Director's determination that the letters do not specifically discuss how his [redacted] technology has impacted the field beyond [redacted] and its clients.

Upon review, we agree with the Director's determination that the letters do not contain specific, detailed information explaining the unusual influence or high impact his [redacted] technology or his achievements in [redacted] have had on the general field. Letters that specifically

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

articulate how a petitioner's contributions are of major significance to the field and its impact on subsequent work add value.[5] 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.[6]

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

> *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 fulfill this criterion, a petitioner must demonstrate that he commands a high salary or other significantly high remuneration for services in relation to others in his field.[7]

In response to the RFE, the Petitioner indicated that his annual salary of $135,300 was a "management level 7" salary, and was higher than the average base salaries of other U.S. executives employed in positions such as executive managers ($74,516), senior executive managers ($99,505) or top executives ($104,600). In support of this assertion, the Petitioner provided Internet excerpts from www.indeed.com and the U.S. Department of Labor's *Occupational Outlook Handbook*.

The Director determined that these general salary statistics for various executive-level positions were not a sufficient basis for comparison, as they did not reflect that the Petitioner earned a high salary or other significantly high remuneration in relation to others in his field or specifically those at a "management level 7" salary. On appeal, the Petitioner simply states that "the law explicitly requires evidence that the beneficiary has commanded a high salary or other significantly high remuneration for services, in relation to **others** in the field. See 8 CFR. The regulation does not state other 'high earners' in the field but states 'others' in the field."

We agree with the Director's determination. The Petitioner has not demonstrated that the submitted documentation pertaining to various "executive" salaries constitutes an appropriate basis of comparison to the Petitioner's position. The record does not sufficiently show that the data regarding this broad category represents an appropriate comparison against individuals engaged in similar work. *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 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).

Moreover, on the Form I-140, Immigrant Petition for Alien Worker, the Petitioner classified his position under Standard Occupation Classification (SOC) code 15-1241, "Computer Network Architects." While we note that he lists his job title on the Form I-140 as a [redacted]

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

[6] *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).

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

"executive," his selection of SOC code 15-1241 as an appropriate classification of his occupational title contradicts his assertion that his position is executive in nature, and suggests that the appropriate basis for comparison is whether he commands a higher salary or other significantly high remuneration for services in relation to other computer network architects in the field. The Petitioner must resolve this discrepancy 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).

Based on the foregoing, the Petitioner has not demonstrated that he meets this regulatory 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 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. at 954. 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).

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.