U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19956575

Date: MAR. 3, 2022

Appeal of Nebraska Service Center Decision

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

The Petitioner, a financial specialist, 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 had satisfied only one of the ten 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,
>
> (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 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). 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 works at [redacted] as a senior manager. Because the Petitioner has not indicated or demonstrated that he has received a major, internationally recognized award at 8 C.F.R. § 204.5(h)(3), 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 only fulfilled one criterion, leading or critical role at 8 C.F.R. § 204.5(h)(3)(viii). On appeal, the Petitioner maintains eligibility for six additional criteria, including through the submission of comparable evidence under 8 C.F.R. § 204.5(h)(4). After reviewing all of the presented evidence, the record does not establish that the Petitioner meets the requirements of at least three criteria.

A. Evidentiary 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, a 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] The Petitioner contends that he meets this criterion based on his participation on industry roundtables. The record reflects that the Petitioner provided evidence showing his service on various roundtables, such as the [redacted] Roundtable in 2019. In addition, the Petitioner submitted a letter from [redacted] who indicated that the Petitioner "has also seen him be recruited to sit on various industry roundtables," and a letter from [redacted] who stated that "[i]nvitation to such industry leading roundtables is by invitation only and is reserved for top

[1] *See* 6 *USCIS Policy Manual* F.2(B)(2), 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).

executives and renowned experts in the field of [redacted]' and "[t]he top 20 representatives from the 20 top largest banks attend these roundtables."

The Petitioner did not establish that any of the roundtables require outstanding achievements of their members, as judged by recognized national or international experts consistent with this regulatory criterion. Here, the Petitioner did not offer the specific membership or invitation requirements for any of the roundtables to show that they require outstanding achievements and that membership is judged by recognized national or international experts. Instead, he submitted a letter from [redacted] who made broad assertions about all roundtables in general without providing specific information for each of the roundtables in which the Petitioner participated. In addition, although [redacted] claimed that roundtables are "reserved for top executives and renowned experts in the field," [redacted] did not elaborate and corroborate those claims, nor did he demonstrate how being a top executive and renowned expert equates to outstanding achievements. Furthermore, the Petitioner did not claim and establish that recognized national or international experts judge the roundtable candidates for membership.

For the reasons discussed above, the Petitioner did not demonstrate that he meets this criterion.

> *Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.* 8 C.F.R. 204.5(h)(3)(iv).

This regulatory criterion requires a petitioner to show that not only has an individual been invited to judge the work of others, but also that the individual actually participated in the judging of the work of others in the same of allied field of specialization.[2] The Petitioner claims that his "recruitment constitutes [the] Petitioner's meeting a simple criterion regarding being a judge of his peers as [the] Petitioner accepted the task of hiring an individual with nearly double his own quantitative experience and then proceeded to lobby to secure an above-entry-level salary for this individual." The record contains a letter from [redacted] who stated that the Petitioner "voluntarily assumed the role of recruiter for several key positions within his department" and "has reviewed more than one hundred prescreened (by [redacted] Human Resources Department) to isolate and bring in these recruits."

Here, the Petitioner has not sufficiently shown that he participated as a judge of the work of others consistent with this regulatory criterion. Specifically, the Petitioner did not establish how recruiting individuals to fill vacancy positions is tantamount to participating as a judge of the work of others. Moreover, the Petitioner did not demonstrate his designation "as a judge," nor did he show that he actually judged the work of others in the same or similar field of specialization. In addition, the evidence in the form of a letter from [redacted] does not contain specific information detailing whom, when, and what work he judged. Without probative documentation, his evidence regarding his recruitment and hiring is inadequate to satisfy this criterion.

Accordingly, the Petitioner did not demonstrate that he fulfills this criterion.

[2] *See* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(2).

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.[3] 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. The Petitioner asserts:

> [He] is confirmed by CFOs and Treasurers at his current employer and likewise at other global institutions to have made major contributions to the industry. These contributions include his [redacted] rubric, his best practices, his participation in annual industry roundtables, [and] his contribution to wording of regulations whose wording was adopted *in toto* into the existing regulations since the onset of the pandemic.

In support of his claims, the Petitioner provided recommendation letters that generally praise his work for his employers but do not show that he has made contributions of major significance in the field. For instance, [redacted] discussed the Petitioner's [redacted] and credited the Petitioner "with mobilizing the bank's [redacted] personnel long before the government and countless other banks had at the beginning of the pandemic" and his "algorithm allowed [redacted] to thrive during COVID19 by becoming a leading East Coast lender in Paycheck Protection Program (PPP) loans to small business." Similarly [redacted] stated that the Petitioner "was recruited specifically to head his own risk assessment team at [redacted] Bank to perform the same task that he had masterfully performed for both [redacted] and [redacted]." Likewise, [redacted] indicated that the Petitioner "was specifically chosen over all other members of the [redacted] team experts - including myself – at [redacted] to analyze and provide counsel to mitigate [redacted] deficiencies in the [redacted] existing system." The letters, however, do not show the influence of the Petitioner's work beyond [redacted] Bank or former employers to reflect original contributions of major significance in the overall field.[4] Here, the Petitioner's contributions to his employers are more applicable to the leading or critical role criterion at 8 C.F.R. § 204.5(h)(3)(viii), which the Director determined that the Petitioner satisfied.

Moreover, [redacted] stated that "the Service may be interested in knowing that on May 21, 2021 Federal Reserve Board ("Fed") directly contacted . . . in a conference call to congratulate [redacted] Bank for our being best in class and issued its top rating for [redacted] management" and "informed us our best practices are being shared with other Banks across the industry as the new standard for Best Practices." However, the Petitioner filed the petition in November 2020. The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1). In addition, [redacted] did not further elaborate and explain the "best practices" in which he was referring to in his letter. Further, the

[3] *See* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(2) (providing that although funded and published work may be "original," this fact alone is not sufficient to establish that the work is of major significance).

[4] *See* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(2); *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).

Petitioner did not provide evidence from the Federal Reserve Board showing that it "shared with other Banks across the industry as the new standard for Best Practices."

In addition, as discussed previously, [redacted] stated that the Petitioner "has also seen him be recruited to sit on various industry roundtables." [redacted] however, did not further elaborate and explain the significance of the Petitioner's participation or service on the various industry roundtables. Moreover, [redacted] did not indicate, for example, whether any of the Petitioner's roundtable discussions resulted in any majorly significant contributions in the overall field rather than limited to the roundtables. Further, [redacted] indicated that the Petitioner's "suggestions on implementation of [redacted] rule is trusted and has frequently been adopted *in toto* by the Fed." (emphasis in original). Again, [redacted] did not expound on his claims. He did not identify the Petitioner's specific suggestions, nor did the Petitioner reference any supporting evidence showing that those suggestions have been implemented in the rule, let alone resulted in original contributions of major significance in the field.

Here, the letters do not contain specific, detailed information explaining the unusual influence or high impact that the Petitioner's work has had in the overall field. Letters that specifically articulate how an individual'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] 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.

> *Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.* 8 C.F.R. § 204.5(h)(3)(vi).

The regulation at 8 C.F.R. § 204.5(h)(3)(vi) requires his "authorship of scholarly articles in the field, in professional or major trade publications or other major media."[7] As defined in the academic arena, a scholarly article reports on original research, experimentation, or philosophical discourse. It is written by a researcher or expert in the field who is often affiliated with a college, university, or research institution. In general, it should have footnotes, endnotes, or a bibliography, and may include graphs, charts, videos, or pictures as illustrations of the concepts expressed in the article.[8] For other fields, a scholarly article should be written for learned persons in the field. Learned persons include all persons having profound knowledge of a field.[9] The Petitioner asserts to meet this criterion based on "the publication of an annual report relied on by professionals in both this nation's government and by investors both individual and institutional, for asset allocation and compliance issues."

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[5] *See* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(2).
[6] *Id. 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* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(2).
[8] *Id.*
[9] *Id.*

The Petitioner initially submitted three business documents authored by him on behalf of [redacted] Bank: [redacted]', [redacted]' and '[redacted]' In response to the Director's RFE, he provided an email from him directing the posting of the '[redacted]' on [redacted] website.[10] While the documents appear to be written for learned persons and thus qualify as scholarly articles,[11] the Petitioner did not demonstrate that the papers were published in professional or major trade publications or other major media.[12] The Petitioner did not show where or if the [redacted] documents were published, let alone published in professional or major trade publications or other major media. As it relates to the liquidity disclosure document, the Petitioner did not provide evidence establishing that [redacted] website qualifies as a professional or major trade publication or other major medium. Simply posting a document on a company's website, as well as authoring material without publication or posting, is insufficient to meet this criterion without evidence showing the website's standing or status as a major medium.

Accordingly, the Petitioner did not establish that he fulfills this criterion.

> *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.[13] The Petitioner initially provided evidence of his annual salary of $152,000, including other forms of compensation including one time awards, bonuses, and health and wellness incentives. In addition, the Petitioner submitted comparative average salary data from a range of salary sources, such as $126,000 (unidentified source), $118,000 (PayScale with $161,000 in the 90th percentile), and $109,000 (ZipRecruiter with $177,000 classified as high). In response to the Director's RFE, the Petitioner included a letter from [redacted] who claimed that the Petitioner "would easily command a BASE SALARY of $250,000 per annum." Further, he presented comparative average salary from ZipRecruiter ($85,000 with a $135,000 in the 95th percentile) and Salary.com ($99,000 with $131,000 in the 90th percentile).

The Petitioner demonstrated that he commanded a salary above the average of others in his field; however, his salary falls short of earning a high one. Again, the Petitioner presented data containing a range of salary figures, as low as $85,000 to as high as $177,000. In fact, the record also contains salaries from sample companies, such as PayPal ($177,000), E*Trade Financial ($155,000), MPG Operations ($169,000), and CLS Group ($162,000), indicating higher salaries than the Petitioner. While the regulation does not require the Petitioner to show that he earned the highest salary, the record does not reflect that he commands a high salary when compared to other senior managers in

[10] The Petitioner also offered evidence of another [redacted]' for the three months ended on March 31, 2021. However, eligibility must be established at time of filing. *See* 8 C.F.R. § 103.2(b)(1).

[11] The [redacted] indicated that the audience distribution included: bank executives, liquidity risk professionals, credit risk professionals, operational risk professionals, and interest rate risk professionals.

[12] *See* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(2) (providing that evidence of professional or major trade publications or in other major media publications should establish that the circulation (on-line or in print) is high compared to other circulation statistics and the intended audience).

[13] *See* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(2).

his field. *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). Here, the Petitioner did not show that the comparison of average and median salaries reflects that he commanded a high salary in relation to other senior managers in his field. Moreover, while [redacted] asserted the salary the Petitioner "would easily command," this regulatory criterion that the individual "has commanded," reflecting actual salaries rather than projected or estimated salaries.

For these reasons, the Petitioner did not demonstrate that he satisfies this criterion.

> *Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk or video sales.* 8 C.F.R. § 204.5(h)(3)(x).

The Petitioner asserts eligibility for this criterion because his "corroborating evidence as to the commercial success of [his] clients was documented when they followed his advice, defying the industry norm, and spun off a less profitable and regulatorily more burdensome retail unit." In order to fulfill this criterion, the evidence must show that the volume of sales and box office receipts reflect an individual's commercial successes relative to others involved in similar pursuits in the performing arts.[14] In this case, the Petitioner is not a performing artist, such as a singer or actor. Rather, the Petitioner is a [redacted] senior manager at a bank. Thus, the Petitioner does not qualify for this criterion. Moreover, the Petitioner did not submit evidence of his "commercial successes" in the form of "box office receipts or record, cassette, compact disk or video sales."

Accordingly, the Petitioner did not establish that he meets this criterion.

B. Comparable Evidence

The Petitioner claims that he is "allowed to submit comparable evidence as per the regulations at 204.5(h)(5) is the fact that the regulation does not require a showing that [he] demonstrate that his industry or occupation 'does not have standards that readily apply.'"[15] On the contrary, the regulation at 8 C.F.R. § 204.5(h)(4), rather than C.F.R. § 204.5(h)(5), addresses comparable evidence and allows for comparable evidence if the listed criteria do not readily apply to his occupation.[16] A petitioner should explain why he has not submitted evidence that would satisfy at least three of the criteria set

[14] *See* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(2).

[15] The Petitioner also claims eligibility under the "Mentor" criterion. However, the regulation at 8 C.F.R. § 204.5(h)(3)(i)-(x) does not contain a criterion specifically addressing mentors. In response to the Director's RFE, the Petitioner made similar assertions pertaining to satisfying criteria regarding "[s]erving as a mentor outside the scope of his normal course of business" and "[r]eputation in the field of endeavor." If he wanted to make these claims under any of the ten criteria, the Petitioner did not articulate his intentions and identify the appropriate criteria.

[16] *See* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(2).

forth in 8 C.F.R. § 204.5(h)(3), as well as why the evidence he has included is "comparable" to that required under 8 C.F.R. § 204.5(h)(3).[17]

Here, the Petitioner has not shown why he cannot offer evidence that meets at least three criteria. The fact that the Petitioner did not provide documentation that satisfies at least three or could not establish eligibility is not evidence that a [redacted] senior manager could not do so. The Petitioner did not demonstrate that the criteria do not apply to his occupation. Furthermore, the Petitioner did not show why the other criteria not claimed, such as the awards under 8 C.F.R. § 204.5(h)(3)(i) and published material under 8 C.F.R. § 204.5(h)(3)(iii), would not be applicable to a [redacted] senior manager or other financial position. Moreover, the Petitioner did not establish why his evidence should then be considered as comparable evidence under the same criteria that he claimed to meet. In addition, the Petitioner did not show how his evidence is "truly comparable" to the criteria listed in the regulation.[18]

For these reasons, the Petitioner did not demonstrate that he qualifies for additional criteria through the submission of comparable evidence.

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 those progressing toward the top. *See Price*, 20 I&N Dec. at 954 (concluding that even major league level athletes do not automatically meet the statutory standards for classification as an individual of "extraordinary ability,"); *Visinscaia*, 4 F. Supp. 3d at 131 (internal quotation marks omitted) (finding that the extraordinary ability designation is "extremely restrictive by design,"); *Hamal v. Dep't of Homeland Sec. (Hamal II)*, No. 19-cv-2534, 2021 WL 2338316, at *5 (D.D.C. June 8, 2021) (determining that EB-1 visas are "reserved for a very small percentage of prospective immigrants"). *See also Hamal v. Dep't of Homeland Sec. (Hamal I)*, No. 19-cv-2534, 2020 WL 2934954, at *1 (D.D.C. June 3, 2020) (citing *Kazarian,* 596 at 1122 (upholding denial of petition of a published theoretical physicist specializing in non-Einsteinian theories of gravitation) (stating that "[c]ourts have found that even highly accomplished individuals fail to win this designation")); *Lee v. Ziglar*, 237 F. Supp. 2d 914, 918 (N.D. Ill. 2002) (finding that "arguably one of the most famous baseball players in Korean history" did not qualify for visa as a baseball coach). 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

[17] *Id.*

[18] *See* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(2).

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 Director determined that the Petitioner has served in a leading or critical role, 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.