U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22143529

Date: NOV. 16, 2022

Appeal of Nebraska Service Center Decision

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

The Petitioner, a specialist in aerospace technology and [redacted] modelling, 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 Nebraska Service Center denied the petition, concluding that the record did not establish that the Petitioner met the initial evidence requirements of this classification through evidence of either a major, internationally-recognized award or meeting three of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3). On appeal, the Petitioner asserts that she meets four of the evidentiary criteria in addition to the two that the Director concluded she met.

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

The Petitioner is a specialist in aerospace technology and the application of [redacted] the modelling of air transportation demand and other issues in the aviation sector. She earned a Diploma of Candidate of Sciences in technical sciences, equivalent to a doctorate degree in the United States, from the [redacted] in 2015, and is currently employed as a senior operational analyst by [redacted]

A. Evidentiary Criteria

Because the Petitioner has not indicated or established that she has received a major, internationally recognized award, she 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 two of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), relating to her authorship of scholarly articles and her participation as a judge of the work of others in her field, and we agree with this determination. On appeal, the Petitioner asserts that she also meets the following evidentiary criteria:[1]

- (ii) – membership in associations requiring outstanding achievements of their members
- (v) – original contributions of major significance in the field
- (viii) – a leading or critical role for organizations having a distinguished reputation
- (ix) – a high salary or significantly high remuneration in relation to others in the field

In support of her claim to these criteria, the Petitioner submits new evidence on appeal. 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

[1] The Petitioner does not contest the Director's decision regarding her previous claim to the evidentiary criterion at 8 C.F.R. § 204.5(h)(3)(iii) relating to published material about her and her work in the field in professional or major trade publications or other major media. We will therefore consider that claim to be abandoned.

on appeal. *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). Therefore, our review of her claims below will only consider evidence in the record before the Director.

> *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)

The Petitioner bases her claim to this criterion on her membership in four professional associations. We initially note that the evidence regarding one of these, the National Air Transportation Association, indicates that the Petitioner's business, not the Petitioner, is a member. As for the remaining three associations, she submitted evidence confirming her membership, but provides the same response on appeal as was included in her response to the Director's request for evidence (RFE). Notably, regarding the one association for which she submitted evidence of membership requirements, the American Institute of Aeronautics and Astronautics, the Petitioner does not explain why attainment of a bachelor's degree in science or engineering, or equivalent professional experience, would be considered to be outstanding in a field where such qualifications represent the minimum requirement for employment. We therefore agree with the Director and conclude that the Petitioner does not meet this 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)

In order to satisfy the regulation at 8 C.F.R. § 204.5(h)(3)(v), a petitioner must establish that not only have they made original contributions, but that those contributions have been of major significance in the field. 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. *See Visinscaia*, 4 F. Supp. 3d at 134-35.

Here, the Petitioner identifies a paper she published in the journal *Aviation* in 2007, [redacted] as an original contribution of major significance. She asserts, without referencing supporting evidence, that this paper is the "oldest" one on forecasting aviation transport demand using [redacted]. However, reference letters from [redacted] and [redacted] state that she was *among* the first to use [redacted] in this way. While we do not doubt the originality of this work, the evidence does not support the Petitioner's statement and is insufficient to show that it constituted an innovation which rose to the level of major significance.

Related to this claim, the Petitioner also asserts that a particular keyword search in Google Scholar shows that her 2007 paper in *Aviation* "is one of the most cited papers on aviation demand forecasting of all time." We first note that the Petitioner did not submit documentation of the results of such a search. In addition, she did not show that these results would support her claim, especially considering that several of the expert letters submitted on her behalf reference older forecasting models that had been in existence for decades.

More importantly, the Petitioner does not indicate how the results of this search would show that her research was widely adopted or built upon by others in the field. While the number of citations to her 2007 paper shows that there was some level of interest in her work, the record lacks sufficient context to show that that interest showed her work to be of major significance. The *USCIS Policy Manual* provides that "a goodly number" of citations "may be probative of the significance of the person's contributions to the field of endeavor,"[2] but as noted above it is a petitioner's burden to establish eligibility. Here, the Petitioner provides a chart taken from an article posted on a website in 2015 which shows the average number of citations to papers published in several broad fields, and notes that it shows that papers in the field of engineering average approximately 5 citations, meaning that citations to her 2007 paper are nearly 10 times the average. However, since the number of citations in a field may change over time, it is not apparent that this data from an article posted in 2015 remained accurate 6 years later at the time of filing. In addition, the Petitioner has not explained how a comparison to the average citation rate in a broad field such as engineering provides an accurate gauge of the significance of this paper in the Petitioner's area of expertise. Finally, comparison of the citations to the Petitioner's paper with the average number of citations in the field does not show that it was amongst the most highly-cited papers in the field.

In further support of the meaning of the number of citations to her 2007 paper in *Aviation*, and in response to the Director's RFE, the Petitioner submitted several reports. Two of these were from the Russian elibrary.ru website and show searches for articles published by authors affiliated with the [redacted] where the Petitioner was employed as a researcher for several years, and [redacted] where she received her Ph.D. These show that of researchers affiliated with [redacted] she ranks [redacted] in terms of overall citations in the field of transport, and that her 2007 paper ranks [redacted] in the field of mechanical engineering from those authors affiliated with [redacted] She also submits a webpage from *Aviation* showing that her 2007 paper ranks [redacted] in number of views of the papers published in that journal. These reports substantially limit the area of consideration to either a single journal or a single institution, and therefore the results do not show the significance of the Petitioner's contribution to the overall field. For example, the list showing her total citations ranks her [redacted] out of only 16 other researchers. Further, this list showing total citations in the field of "transport" does not reflect the relative impact of the citations to her 2007 paper.

The Petitioner also asserts on appeal that the reference letters she submitted show that she has made contributions of major significance.[3] She points out that some of the authors of these letters indicate that they have cited to her work in their own published papers in the field. [redacted] of the [redacted] University in [redacted] Ukraine states that his group used the Petitioner's 2007 paper as a foundation to develop a new forecasting method which combined her [redacted] approach with another technique to achieve more accurate results. While he states that the Petitioner's work "benefitted not only our research but the industry as a whole," he does not provide details of how her work made an impact on the research of others beyond listing the nationalities of others who have also cited to the 2007 paper.

[2] See 6 *USCIS Policy Manual* F.2, Appendix

[3] All of the reference letters in the record were reviewed and considered, including those not specifically mentioned in this decision.

[redacted] also mentions another paper authored by the Petitioner in 2013, which he indicates was published in the *Scientific Bulletin of Moscow State Technical University of Civil Aviation*, and claims that it shows that she "was among the first researchers worldwide to adopt more sophisticated techniques." Despite his statement that "this work became a very important precursor of many similar research works that followed," there is no evidence in the record that this paper had any influence on the field or other researchers. Notably, the Petitioner's Google Scholar profile indicates that this paper had not been cited by other researchers at the time the petition was filed.

Another letter was written by [redacted] of the [redacted] University of Technology and Economics, who also indicates that the Petitioner was among the first to use an [redacted] model to predict air traffic demand and "take the dynamics of air route networks into account." He states that her "2013 work" introduced a new [redacted] that "was poised to change the game," and that while it was useful in his research "it can do much more and has a great potential to improve air transportation indsuty workdliwe [sic]." [redacted] goes on to provide a lengthy analysis of the forecast model used by the Federal Aviation Administration in the U.S., but the record lacks evidence that the Petitioner's model had fulfilled that potential or generated significant interest from the FAA or other agencies or amongst researchers in the field.

[redacted] of the [redacted] University of Technology, who met the Petitioner at scientific conferences, writes that she was the first to consider air route [redacted] development in her forecasts of aviation traffic, while leading aircraft producers based their forecasts on existing air routes. But [redacted] does not indicate that those producers and others in the field have now adopted the Petitioners approach or models, nor does the record include documentary evidence that they have done so.

Our review of the evidence discussed above together with other evidence submitted in support of this criterion shows that while the Petitioner was among the first researchers to apply [redacted] to the problem of modelling passenger air traffic demand, her models and techniques have not been shown to have widely influenced other researchers in her field. For example, both [redacted] and [redacted] write in their reference letters that her model and method have been adopted as a standard at [redacted], but the record does not include documentary evidence to support these statements. Further, the adoption of her work by her colleagues and the institution that employed her for nearly a decade does not show that her work has contributed to the overall field to the level of major significance. Accordingly, we conclude that the Petitioner has not established that she meets this criterion.

> *Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.* 8 C.F.R. § 204.5(h)(3)(viii)

In order to meet the requirements of this criterion, a petitioner must establish that they performed either a leading or critical role, and that the organizations that they played that role for have a distinguished reputation. A leading role should be apparent by its position in the overall organizational hierarchy and through the role's matching duties. A critical role is one in which the petitioner has contributed in a way that is of significant importance to the outcome of the organization's activities.[4]

[4] *See* 6 *USCIS Policy Manual* F.2, Appendices Tab.

The Petitioner focuses on appeal on her role at [redacted] where she performed as a junior research assistant from 2008 to 2017. We note that despite the Director's specific request in his RFE, the Petitioner did not include evidence supporting the institution's distinguished reputation beyond statements the statements of its officials in their reference letters and a reference to the institution's website. Although the Petitioner has submitted additional evidence about [redacted] and its reputation on appeal, as noted above we will consider only the record of evidence before the Director in our review.

In his decision, the Director concluded that the letter from [redacted] did not demonstrate that the Petitioner held a leading position at [redacted] in terms of its overall organizational hierarchy, or that her position was critical or influential to [redacted]. On appeal, the Petitioner refers again to the report from the Russian elibrary.edu website showing that in the area of transport, she ranks [redacted] out of 16 researchers from [redacted] in number of citations to her work. Despite her claim that this is "substantial" evidence of her critical role, this evidence provides no connection between the citations to her work in this limited subject field and any contributions to the activities of [redacted] as an institution.

Turning to [redacted] letter, she highlights the sections of his letter stating that she was one of the institution's "most prolific researchers at the time," which led to her receipt of a Certificate of Merit. However, [redacted] does not go beyond the language of this certificate to explain its significance or the significance of the work which led to the Petitioner's receipt of the certificate. In a later section of the letter, he states that the method developed by the Petitioner "was adopted as a standard and leading technique for predicting air route existence by [redacted] (and, therefore, by the Russian Department of Transportation.) It is indisputable that [the Petitioner] pioneered the application of [redacted] to the problem of long-term forecasting of aviation traffic in [redacted].." But he does not explain the impact of the Petitioner's work on [redacted] overall activities.

Another letter on which the Petitioner focuses here was written by another [redacted] official, [redacted] He describes a different project on which he collaborated with the Petitioner, in which they decided to use [redacted] to predict the cost of [redacted] airplane then under development. While he describes that as a novel us of [redacted] at the time, he does not indicate that this work was critical for [redacted] In addition, he also states, like [redacted], that her forecasting methods "were standardized by [redacted] and by the aviation department," but like [redacted] does not go further into depth to explain the impact this had on [redacted] overall operations. As such, this evidence does not demonstrate that the Petitioner's role at [redacted] was either leading or critical.

> *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 his decision, the Director acknowledged receipt of salary statistics from the website rosstata.gov.ru and the Petitioner's income tax report from 2014, but noted that these were not accompanied by certificates of translation as required per 8 C.F.R. § 103.2(b)(3). On appeal, the Petitioner submits translations certificates, as well as the original documents in Russian. She asserts that her salary of 898,644 RUB in 2014 is high when compared to the yearly average income for a Russian researcher, which she indicates was 378,972 RUB. We first note that it is not apparent from the evidence how the Petitioner arrived at this figure. The chart submitted with her response to the Director's RFE

clearly indicates that the average monthly salary for workers in "research and development" was 56,188 RUB, which equates to an annual salary of 674,256 RUB.

In addition, the statistics from Rosstat do not provide sufficient detail to form a useful basis for comparison to the Petitioner's salary. Evidence to show that a person's compensation is high relative to that of others in the field may include geographical or position-appropriate compensation surveys.[5] Average salary information for those performing work in a related but distinct occupation with different responsibilities is not a proper basis for comparison. *See Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994) (considering 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). The AAO notes that in *Matter of Racine*, 1995 WL 153319 at *1, *4 (N.D. Ill. Feb. 16, 1995), the court stated:

> [T]he plain reading of the statute suggests that the appropriate field of comparison is not a comparison of Racine's ability with that of all the hockey players at all levels of play; but rather, Racine's ability as a professional hockey player within the NHL. This interpretation is consistent with at least one other court in this district, *Grimson v. INS*, No. 93 C 3354, (N.D. Ill. September 9, 1993), and the definition of the term 8 C.F.R. § 204.5(h)(2), and the discussion set forth in the preamble at 56 Fed. Reg. 60898-99.

Although the present case arose within the jurisdiction of another federal judicial district and circuit, the court's reasoning indicates that USCIS' interpretation of the regulation at 8 C.F.R. § 204.5(h)(2) is reasonable. In this case, the data from Rosstat appears to consider all workers engaged in research and development, regardless of education, experience, or the complexity of the duties they perform, and is therefore not an adequate basis of comparison to the Petitioner's position as a researcher holding an advanced degree. Further, the only figure provided is an average. Although the Petitioner's compensation in 2014 was certainly above the average figure provided, the data is not sufficient to establish that it can be considered to be high when compared to top earners in similar positions. Finally, this is a national figure, and therefore does not take into account the inevitable differences in compensation based upon location, especially in a large territory such as the Russian Federation. For all of these reasons, the Petitioner has not established that she has commanded a high salary in relation to others in her 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

[5] 6 *USCIS Policy Manual* F.2, Appendices Tab.

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 her 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 she 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 her 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.