U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 24844951

Date: APR. 11, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, a business data engineer, seeks classification as an individual of extraordinary ability in business. 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. *Id.*

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish that the beneficiary met any of the ten evidentiary criteria required to show eligibility for this visa classification. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

An individual is eligible for the extraordinary ability classification if they have extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and their achievements have been recognized in the field through extensive documentation; they seek to enter the United States to continue work in the area of extraordinary ability; and their entry into the United States will substantially benefit prospectively the United States. Section 203(b)(1)(A) of the Act.

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 a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then they must provide 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 they are 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 business data engineer who intends to continue working in this field in the United States. Because he has not indicated or established that he has won a major, internationally recognized award, the Petitioner must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Director denied the petition, finding that the Petitioner did not meet any of the following criteria:

- (iv), Participation as a judge of the work of others;
- (v), Original contributions of major significance in the field;
- (viii), Leading or critical role for organizations with a distinguished reputation; and
- (ix), Commanded a high salary or other significantly high remuneration.

On appeal, the Petitioner continues to assert that he qualifies under all of these criteria, as well as 8 C.F.R. § 204.5(h)(3)(ii), membership in associations that require outstanding achievements, and 8 C.F.R. § 204.5(h)(3)(vi), authorship of scholarly articles in the field, which he had also claimed in the underlying petition. Upon a review of all the evidence, the Petitioner has not established that he meets at least three of the regulatory criteria, for the reasons below.

> *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 states that he qualifies for this criterion due to his membership in the following:

- Amazon Web Services (AWS) Certified Global Community;
- Association for Computing Machinery (ACM);
- Institute of Electrical and Electronics Engineers (IEEE); and
- Data Quality and Data Governance Forum on LinkedIn.

The record does not establish that the Petitioner's membership in these organizations is based on outstanding achievements in his field, as judged by recognized national or international experts in that field. The Petitioner submitted a certificate stating that he successfully completed the requirements to

be an "AWS Certified Solutions Architect – Associate," as well as documentation indicating that this certification requires the completion of certain coursework.[1] It is not apparent that being "AWS certified" constitutes membership in an association. Instead, a message from an administrator of the AWS Certified Global Community website indicates that they don't offer membership documentation because "this community is a benefit of being certified." Another screen capture of the AWS certification website indicates that the AWS Certified Global Community is a forum for certified professionals to communicate with each other. This does not establish that the AWS Certified Global Community is an association, or that being AWS certified constitutes membership in an organization. Instead, it indicates that AWS certification is a professional credential. Furthermore, the record does not indicate that completing the required coursework for AWS certification constitutes an outstanding achievement in the field of data engineering or that this is judged by recognized national or international experts in the field.

The certificate from ACM stating that the Petitioner has been admitted for "Professional Membership" does not state the requirements for that membership, and the membership card for IEEE only states that the Petitioner is a "Member" in the "Germany section" without stating membership requirements. Finally, it is not apparent that a LinkedIn forum such as the Data Quality and Data Governance forum constitutes an association, and the record does not include documentation of any membership requirements for that forum. Apart from the Petitioner's statements in his cover letters, there is no indication that any of these memberships require outstanding achievements in the field. It is the Petitioner's burden to submit sufficient relevant, probative, and credible evidence to demonstrate that his claims are more likely than not to be true. *Matter of Chawathe*, 25 I&N Dec. at 375-376. The Petitioner has not done so here.

The documentation in the record does not establish that any of the Petitioner's memberships are based on outstanding achievements, as judged by nationally or internationally recognized experts in the Petitioner's field. The Petitioner does not meet the requirements of 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).

The Petitioner states that he qualifies for this criterion based on instances in which he judged the work of his colleagues. The Director concluded that this was insufficient to establish that the Petitioner had participated in a judge of the work of others. We will withdraw this finding.

The letter from A-G-, who worked with the Petitioner at [redacted] a Russian grocery and retail chain, states that the Petitioner interviewed, selected, and supervised a team of subordinate data engineers and was part of a performance review panel in May 2019. The letter states that the panel was part of the company's twice-yearly performance review process, and that its purpose was to evaluate the workers' KPIs, or key performance indicators. This letter provides sufficient information to establish

[1] While the Petitioner's letter in response to the Director's request for evidence (RFE) states that AWS certification also requires "significant experience" in certain professional fields, this is not supported by the documentation provided. Furthermore, professional experience in a field is not an outstanding achievement as judged by recognized national or international experts in that field, and so does not establish eligibility for this criterion.

that the Petitioner participated as a judge of the work of others in his field on this occasion.[2] The Petitioner meets the requirements of 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).

The Petitioner states that he qualifies for this criterion based on his work for [redacted] and for [redacted], a division of the rail carrier [redacted] as well as his publications and a conference speaking engagement. To satisfy this criterion, the Petitioner must establish that he made original contributions to his field and that those contributions have been of major significance to the field.

At [redacted] the Petitioner co-developed a corporate data warehousing project (DWH) which helped the company implement digital analytics and business intelligence in its operations. While the letters provided from the Petitioner's coworkers at [redacted] indicate that DWH was helpful to the company, they do not show that his contribution was original or had major significance to his field beyond [redacted] *See Amin v. Mayorkas*, 24 F.4th 383, 393-394 (5th Cir. 2022) (finding that contributions which were not adopted beyond a petitioner's employer do not meet this criterion). For example, the initial letter from the Petitioner's supervisor at [redacted] A-E-, states that the DWH, which was developed in 2010, "made [redacted] one of the first data-driven companies in the corporate market." However, the petition does not contain documentation to support this assertion or to otherwise demonstrate that the DWH was an original and significant contribution to the field of data engineering.

The Petitioner submits a screen capture of a 2018 article stating that [redacted] developed a logistics portal for its suppliers which would increase the efficiency of its supply chain,[3] as well as a Cnews article about [redacted] implementation of [redacted] and documentation of a conference talk the Petitioner's manager gave about DWH. None of this documentation mentions the Petitioner by name or establishes what influence the Petitioner's work had on his field. The fact that some of the results of the Petitioner's work were publicized does not indicate that they were of major significance to his field beyond [redacted] There is insufficient relevant, probative, and credible evidence in the record to establish the originality or impact of DWH. *Matter of Chawathe*, 25 I&N Dec. at 375-376.

Similarly, the record does not establish that the [redacted] the Petitioner developed at [redacted] had an influence on the Petitioner's field. A support letter from a coworker states that [redacted] was used as the basis for various analytics projects at [redacted] including the [redacted], which tracks and analyzes freight car unit failures and has been highly successful for the organization. The Petitioner also submits a 2020 article from Cnews which discusses how [redacted] was developed with [redacted] from 2017 to 2019. However, the article does not indicate what impact [redacted] had beyond [redacted] *See Amin v. Mayorkas*, 24 F.4th at 393-394.

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[2] The Petitioner also submitted several other documents in support of this criterion, but because the letter from A-G- is dispositive of this criterion, we need not analyze them here. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach").

[3] The screen capture is not a website printout and does not include the article's URL, which makes it difficult to verify and diminishes its evidentiary value.

A second article stating that [redacted] was under consideration for inclusion in the Russian Software Registry does not establish the significance of this consideration. One expert quoted in the article states that [redacted] customers and partners could theoretically employ its business intelligence platform when using its services, and that the organization could use its expertise to enter into the domestic business intelligence market. However, another quoted expert states that companies in different industries require individualized business intelligence solutions and a specialized platform like [redacted] would be of limited use to other organizations. A third expert expresses doubt that [redacted] would develop business intelligence solutions outside its own enterprises. While this article speculates about the potential impact of [redacted] it does not establish what impact the Petitioner's work has actually had on his field. Furthermore, the Petitioner is not mentioned in any of the articles provided. This does not suffice to establish his eligibility for this criterion.

The Petitioner has not shown that his work for [redacted] had significant impact on the field of data engineering. All of the Petitioner's letters of support are from his coworkers, and while these letters are probative, "[i]t is generally expected that one whose accomplishments have garnered sustained national or international acclaim would have received recognition for his or her accomplishments well beyond the circle of his or her personal and professional acquaintances." *See generally* 2 *USCIS Policy Manual* F.2(B)(1), https://www.uscis.gov/policy-manual. The evidence doesn't show that the Petitioner's contributions have been recognized beyond his immediate professional circle. While his colleagues recognize the Petitioner as a highly capable worker, this does not establish that his work has impacted his field in a major way. *Id.* at F.2, Appendix: Extraordinary Ability Petitioners – First Step of Reviewing Evidence (stating that major significance to a field can be shown through means such as widespread commentary, impact, or adoption of a petitioner's contribution in that field). Finally, the various provided articles about the general importance of data analytics to corporations do not mention the Petitioner or his work. The record does not document how, specifically, DWH or [redacted] influenced others in the field of data engineering.

The Petitioner also states he qualifies for this criterion based on articles he posted on the website Medium. First, it is noted that the articles were not submitted with the evidence. Instead, the Petitioner provided the URL of each article. The Petitioner bears the burden of proof in this proceeding. *Matter of Chawathe*, 25 I&N Dec. at 375-76. Referencing a website where evidence can be found does not meet this burden. While we have the discretion to verify the Petitioner's claims, we are under no obligation to obtain supporting evidence on the Petitioner's behalf or on his request. The URLs provided to not establish that the Petitioner's articles were original.

Secondly, the record includes readership statistics indicating that the Petitioner's articles have been read between 66 and 526 times each. While the Petitioner states in his RFE response that "more than 2500 professionals" have read his articles, he arrives at this number by adding up the total number of times all of his articles were viewed. Medium indicates that "Views are the number of visitors who clicked on a story's page, while Reads tells you how many viewers have read the entire story (an estimate)." *Publication Stats – Medium Help Center*, https://help.medium.com/hc/en-us/articles/215793317-Publication-stats. The number of views of the Petitioner's articles therefore does not reflect how many times the articles were read. It is also not apparent that each view came from a different individual. The Petitioner does not provide evidence showing that any of these readers cited his articles or were otherwise influenced by them, or that these readership figures distinguish him from other writers in his field. This does not establish eligibility for this criterion.

We acknowledge that the Petitioner submitted examples of his postings on professional forums, as well as a few instances in which others in his field asked for his advice and assistance. However, the evidence does not demonstrate that the Petitioner's work in any of these instances was original or had an impact beyond the individuals whose questions the Petitioner was answering. Finally, the copy of the Petitioner's presentation at the 2022 [redacted] conference, his speaking invitation, and the general information about that conference do not establish his eligibility. The fact that the Petitioner spoke at a conference does not establish that his presentation was original or that it had an impact on his field.

The record does not demonstrate that the Petitioner's contributions to his field have been original or majorly significant to that field. As such, he does not meet the requirements of this criterion.

> *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 Petitioner states that he qualifies for this criterion based on articles he published on the website Medium and provides the URLs where the articles are located, as well as general information about Medium's level of readership. However, since these articles are not included in the record, it is not apparent that they are scholarly in nature. A scholarly article should be written for learned persons in that field. *See generally* 2 *USCIS Policy Manual* at F.2, Appendix: Extraordinary Ability Petitioners – First Step of Reviewing Evidence (defining "learned persons" as persons with profound knowledge or scholarship in a field). Furthermore, as noted above, the burden of proof in this proceeding is on the Petitioner. *Matter of Chawathe*, 25 I&N Dec. at 375-376. The URLs provided do not establish the substance or nature of the Petitioner's articles. While the Petitioner provided documentation indicating that Medium is a widely-read website, the evidence does not demonstrate that his articles were written for learned persons in his field. The record does not indicate that the Petitioner's articles are scholarly in nature.

Additionally, while the Petitioner characterizes Medium as a professional or major trade publication, he does not provide sufficient documentation of Medium's subject matter or intended audience to support this claim. The fact that Medium is widely-read does not establish that it is a professional or trade publication in the Petitioner's field. *Id.* The Petitioner does not meet the requirements of 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).

The Petitioner states that he qualifies for this criterion based on the pay he received in Russia and Germany from 2020 to 2021. The Director found that much of the evidence provided in support of this criterion did not match the Petitioner's stated occupation or consisted of incomplete website printouts that were insufficient to establish eligibility. On appeal, the Petitioner provides a letter with explanations of his evidence. Upon review, the Petitioner does not qualify for this criterion.

In order to evaluate whether a petitioner has received significantly high remuneration for services, we compare their pay to that of similar workers in that petitioner's field. *See, e.g., Skokos v. DHS*, 420 Fed.Appx. 712, 713-714 (9th Cir. 2011) (stating that a security consultant's salary should be compared

to that of other security consultants performing similar work). In this instance, much of the Petitioner's wage evidence is too general to establish that he has received significantly high remuneration in comparison to similar workers.

The record indicates that the Petitioner earned the following remuneration in 2020 and 2021:

- 2020 Russian earnings: 2,943,441 rubles;
- 2021 Russian earnings (January to March): 680,252 rubles; and
- 2021 German earnings (April to December): 84,286 euros.

In order to establish that his 2020 and 2021 Russian earnings were significantly high, the Petitioner submits pay documentation, a cover letter, and screen captures from various websites.[4] One graph, which the Petitioner states is from habr.com, documents the average salaries for all information technology (IT) workers in various Russian cities in the second quarter of 2020. This graph indicates that the average such salary in [redacted], where the Petitioner worked, averaged 80,000 rubles for the second quarter of 2020, or 320,000 rubles a year. However, this appears inclusive of all IT workers, not solely business data engineers, and so does not establish his eligibility. *Id.*

Another graph the Petitioner states is from the same website indicates that the average 2020 wage for backend developers in [redacted] was 110,478 rubles a month, or 1,325,616 rubles a year. It also states that the 75th percentile wage for these workers was 150,000 rubles a month, or 1.8 million rubles a year, and the 90th percentile wage was 200,000 rubles a month, or 2.4 million rubles a year. This document indicates that it is based on only 38 profiles, which limits its value in showing that the Petitioner's wages are significantly high in relation to similar workers. Additionally, while we acknowledge the Petitioner's statement that "backend developer" is the closest position he could find to his own specialty of data engineering, he did not provide information such as this website's definition of the duties of a backend developer or a list of relevant occupations that were surveyed. This is insufficient to establish that the wages for backend developers, as stated on this website, reflect wages of workers who are comparable to the Petitioner.

A third screen capture, which the Petitioner describes as government statistics provided by Rosstat, surveys wages for different types of workers in the region of [redacted] and states that the average monthly wage for "high-level qualification specialists" in October 2021 was 45,559 rubles a month, or 546,708 rubles a year. Since this wage survey includes workers in various industries unrelated to the Petitioner's specialty, it does not establish that the Petitioner receives significantly high remuneration compared to others in his field.

[4] As noted by the Director, the Petitioner did not submit website printouts for this evidence. Instead, he submitted various cropped screen captures of the websites he was citing, many of which were incorporated into his RFE response letter, and separately listed the URLs where he states the information came from. On appeal, the Petitioner states that he submitted the evidence in this fashion in order to print fewer pages and simplify his petition and that we should visit the URLs provided in order to view the original information. However, we determine eligibility based on the evidence submitted with the benefit request, which is contained in the record of proceeding. 8 C.F.R. §§ 103.2(b)(8); 103.2(b)(16)(ii). It is the Petitioner's burden to submit sufficient relevant, probative, and credible documentation to establish eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. at 375-76. Submitting separate URLs and cropped screen captures diminishes the evidentiary value of the Petitioner's documentation here, because it is not apparent from the record of proceeding that the information provided comes from the same place as the URLs.

Finally, we note that the Petitioner's pay evidence for his work in Russia consists of invoices for services provided as a contractor. It is therefore not apparent that his remuneration is comparable to the information in the websites he provided, which consisted of the wages of salaried workers. The totality of the evidence does not establish that the Petitioner's pay in Russia qualified as significantly high remuneration.

Regarding his wages in Germany, the Petitioner submits a screen capture of a wage survey of German software engineers from the website of Robert Half, and highlights the fact that the average annual wage for such workers is 64,250 euros. However, the survey is for the wages of all software engineers, rather than data engineering specialists like the Petitioner. Further, the screen capture does not state how many wages Robert Half surveyed to make its findings, which limits the data's evidentiary value.

The Petitioner also submits a table from the website iamexpat.com which states that the average IT wage in Germany is 60,563 euros a year. This similarly does not include information about how many workers were surveyed and applies to the Petitioner's industry as a whole rather than his position in particular, and so does not establish eligibility.

The screen capture from Stepstone.de consists of a graph stating that the average wage for workers in business intelligence, which the Petitioner states is closest to his specialty, is 62,178 euros a year. This screen capture contains no information about how many workers were surveyed to arrive at this number, the geographical location where these workers were employed, or their specific duties. Notably, the graph also includes wages for workers in "databases," "IT architecture," and general "IT consulting." It is not apparent from this documentation that the "business intelligence" wage reflects that of workers who are comparable to the Petitioner.

The Petitioner has not established that he commanded a high salary or other significant remuneration for his services in relation to others in his field. He does not meet the requirements of this 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 at 8 C.F.R. § 204.5(h)(3)(i)-(x). Although the Petitioner claims the Beneficiary's eligibility for an additional criterion on appeal, regarding leading or critical roles for organizations with distinguished reputations at 8 C.F.R. § 204.5(h)(3)(viii), we need not address this ground because the Beneficiary cannot fulfill the initial evidentiary requirement of at least three criteria under 8 C.F.R. § 204.5(h)(3). We also need not provide the type of final merits determination described in *Kazarian*, 596 F.3d at 1119-20. Accordingly, we will reserve those issues. *See INS v. Bagamasbad*, 429 U.S. at 25 (1976); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

Nevertheless, we advise that we have reviewed the record in the aggregate, determining 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 for individuals progressing toward the top. U.S. Citizenship and

Immigration Services has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994). Here, the Petitioner has submitted documentation of his successful career building data warehousing and business intelligence systems for various organizations, but has not demonstrated that these achievements have translated into a level of recognition that constitutes sustained national or international acclaim or demonstrates 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. Furthermore, the record does not otherwise demonstrate that the Petitioner is one of the small percentage who has risen to the very top of the field of endeavor. Section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2).

The Petitioner has not demonstrated his eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.