U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 23740321

Date: NOV. 17, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, a cybersecurity interaction designer, 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 the Petitioner did not establish that he satisfied the initial evidentiary requirements through evidence of a one-time achievement or meeting at least three of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3). The matter is now before us on appeal.

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

Section 203(b)(1)(A) of the Act makes immigrant visas available to individuals with 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, provided that the individual seeks to enter the United States to continue work in the area of extraordinary ability, and the individual'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 their 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 they 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 authorship of scholarly articles).[1]

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.[2] *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

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 acknowledged that the Petitioner met the criteria relating to leading or critical role and high salary, but determined that he did not satisfy the awards, membership, judging, original contributions, and scholarly articles criteria. On appeal, the Petitioner maintains that he meets the original contributions criterion.[3] After reviewing the evidence, we conclude the Petitioner has not shown that he satisfies the requirements of at least three criteria.

> *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.[4] As evidence under this criterion, the Petitioner submitted documentation relating to his design projects (Nimble Storage, VMware, Sysdig, and Google), founding of the [redacted] collaborative agreement with the World Bank, and involvement with the [redacted] Political Studies.[5] In addition, the Petitioner provided letters of support from colleagues in the field discussing

[1] *See generally* 6 *USCIS Policy Manual* F.2(B), https://www.uscis.gov/policymanual (indicating that USCIS officers should first "[a]ssess whether evidence meets regulatory criteria: Determine, by a preponderance of the evidence, which evidence submitted by a petitioner objectively meets the parameters of the regulatory description that applies to that type of evidence").

[2] *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B) (stating that in the final merits determination, USCIS officers should evaluate all the evidence together when considering the petition in its entirety to determine if a petitioner has established the required high level of expertise for this immigrant classification).

[3] The Petitioner does not contest the Director's determinations for the awards, membership, judging, and scholarly articles criteria. Accordingly, we deem these issues abandoned. *See Hristov v. Roark*, No. 09-CV-2731, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (the court found the plaintiff's claims to be abandoned as he failed to raise them on appeal to the AAO).

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

[5] In response to the Director's request for evidence, the Petitioner stated that he was abandoning his claims regarding the World Bank, the [redacted] Political Studies "because we acknowledged that they were not strong enough for this criteri[on]."

his work, as well as online articles about products offered by his employers.[6] The Director considered this documentation, but found that it was not sufficient to demonstrate that the Petitioner's work constituted original contributions of major significance in the field. For the reasons discussed below, we agree with that determination.

In his appeal brief, the Petitioner asserts that he provided endorsement letters from authoritative witnesses discussing his contributions to his employers' products. These references discussed his design projects at [redacted] but their statements do not demonstrate the originality of his work and its major significance in the field. As discussed below, the reference letters do not offer sufficiently detailed information, nor does the record include adequate corroborating documentation, to show the nature of specific "original contributions" that the Petitioner has made to the field that have been considered to be of major significance.

Regarding the Petitioner's work for [redacted] Dr. G-I-, Professor of Computer Science at [redacted] University in Italy, asserted that the Petitioner developed the user experience for the [redacted] Platform security called '[redacted] He stated that the Petitioner's "contributions consisted of a set of 'dashboard templates' which allow security administrators and security analysts to gain visibility into sensitive data risk across their entire organization." While Dr. G-I- further explained that these "data visualizations . . . gave users an easier access to an advanced risk summary and a much more graphical data privacy investigation tool," the Petitioner has not demonstrated that this work has affected the field in a substantial way or otherwise constitutes an original contribution of major significance in the field.

With respect to the Petitioner's projects for [redacted] D-K-, the company's former Vice President of Product Operations, indicated that the Petitioner "delivered the [redacted] (NCV) creation user experience," "the multi-cloud NCV platform user experience," and an "artificial intelligence (AI)-driven predictive analytics visualization directly integrated with the acclaimed [redacted] tool." D-K- also stated that the Petitioner provided user experience and graphical user interface (GUI) mockups of innovative features for public product releases, designed critical graphic guidelines and interactive visualizations in collaboration with product and engineering senior executives, and presented to C-level executives user experience prototypes and user experience product roadmaps for the company's product direction, but the Petitioner has not shown that his original work for [redacted] has influenced the field of cybersecurity to the extent that it is of major significance in his field.

In discussing the Petitioner's work for [redacted] G-S-, the company's former Director of Product Management for Edge Computing and Internet of Things, asserted that the Petitioner lead the interaction design vision for Project Dimension (a joint effort with [redacted] Technologies), the development of the "interaction design between [redacted] software configuration GUI and [redacted] hardware ordering GUI," and "the development of the interaction designs that would allow users to improve the cybersecurity posture of their regionalized Software Defined Data Center (SDDC)." While G-S- noted that the Petitioner's work was "significant for the company as a whole," the Petitioner has not demonstrated that his work for [redacted] has been considered important at a level consistent with original contributions of major significance in the field.

[6] These articles do not identify the Petitioner or discuss in detail the significance of his particular contributions.

With regard to the Petitioner's work for [redacted] P-C-, the company's former Vice President of Product, stated that the Petitioner developed the user experience and user interface (UI) for its [redacted] product "to ship all the 2019 and 2020 features, including the user experience and UI for the [redacted] monitoring platform integration." P-C- also asserted that the Petitioner lead the design development of the Runtime Vulnerability Scanning UI, the regulatory compliance UI, and the cybersecurity activity audit UI, but the Petitioner has not shown that the aforementioned work has risen to the level of a contribution of major significance in the field of cybersecurity.

As further evidence under this criterion, the Petitioner contends on appeal that he has "offered numerous articles that mentioned my contributions developed during my employment with [redacted]' The record includes online articles, blogs, and press releases about his employers and their products. For example, the Petitioner submitted material from Searchstorage.techtarget.com, [redacted] blog, Forbes.com/sites/moorinsights, Zdnet.com, Google.com, IvoBeerens.NL, SiliconAngle.com, Be-virtual.net, Thevirtuallyconnected.net, Diginomica.com, Businesstelegraph.co.uk, Insightaas.com, Ambidextrouspm.com, ArchitectingIT, Hpe.com, Mikeleahy.blog, Infrazxp.com, Globenewswire.com, Thenewstack.io, Venturebeat.com, Enterprisenetworkingplanet.com, Theregister.com, Techradar.com, Packetpushers.net, Informa, Virtualizationreview.com, Containerjournal.com, Managedmethods.com, Innovate.ie, [redacted] com, Prnewswire.com, Commvault.com, Kasten.io, [redacted] com, Bloomberg.com/press-releases, Equinix.com/press-releases, Businesswire.com, Lenovo.com, Cloudmarketplace.oracle.com, IBM.com, Techzine.eu, Azuremarketplace.microsoft.com, Aws.amazon.com, Finance.yahoo.com, Techcrunch.com, Businessinsider.com, Crn.com, and Marketplace.redhat.com.[7] None of these articles mentions the Petitioner or explains how his specific original contributions to the products are majorly significant in the field.[8] Nor has the Petitioner demonstrated that the level of attention received by his employers' products signifies that he has made original contributions of major significance in the field of cybersecurity.

The Petitioner further argues that his "contributions have been widely adopted and integrated" into his employers' products as well as those from Oracle, IBM, HPE, and Microsoft Azure. The Petitioner, however, has not demonstrated that his particular user experience and interface designs, which were a component of the aforementioned companies' product offerings, rise to the level of original contributions of major significance in the field. Courts have routinely affirmed our decisions concluding that 8 C.F.R. § 204.5(h)(3)(v) "requires substantial influence beyond one's employers, clients, or customers." *Strategati, LLC v. Sessions*, 2019 WL 2330181, at *6 (S.D. Cal. May 31, 2019)

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[7] The Petitioner also provided articles from Reuters.com, McKinsey.com, and Gartner.com, but these articles discuss general industry trends and not the Petitioner or the products with which he was involved.

[8] For instance, the blog entry from Forbes.com/sites/moorinsights, entitled '[redacted]' does not identify the Petitioner or discuss in detail his particular user interface designs. The article concludes by stating: "We're anxious to see Hewlett Packard Enterprise evolve this product. It really does have amazing potential - potential that would give HPE the opportunity to stand alone among its peers." While the author describes the product as needing to "evolve," "an Intriguing Storage Service Offering," and having "potential," these characterizations are not necessarily indicative of a contribution of major significance in the field. Nor does the record show if this online blog entry was published in *Forbes* magazine. Further, the evidence does not indicate whether the blog was produced by *Forbes* staff, as opposed to being an open-source site through which anyone can post an entry. For all of these reasons, the Petitioner has not demonstrated that this blog constitutes an influential platform demonstrating the major significance of his contributions.

(upholding an agency decision that held "[a] patent is not necessarily evidence of a track record of success with some degree of influence over the field as a whole."); *see also Amin v. Mayorkas*, 24 F.4th 383, 394 (5th Cir. 2022) (upholding agency decision that held evidence insufficient "because it did not show widespread replication of [the petitioner's invention]"). Here, the Petitioner has not shown that his original work has affected the cybersecurity industry at a level commensurate with contributions of major significance in the field.

For the reasons discussed above, the Petitioner has not established that he has made original contributions of major significance in the 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. Accordingly, we reserve the final merits determination.[9] 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. *See Matter of 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")).

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)(l)(A) of the Act. Moreover, the record does not otherwise demonstrate that the Petitioner has garnered sustained national or international acclaim in the field, and that he is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2).

[9] *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"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

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.