U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF M-K-S-

DATE: JULY 26, 2017

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, co-founder of a mini electrical grid development company, seeks classification as an individual of extraordinary ability in business. *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, as required, that the Petitioner met at least three of the ten regulatory criteria. Specifically, the Director found that he had satisfied only a single criterion.

On appeal, the Petitioner asserts that the Director mischaracterized his field and that he actually meets several additional criteria.

Upon *de novo* review, we will sustain the appeal.

I. LAW

Section 203(b)(1)(A) of the Act describes qualified immigrants for this classification as follows:

(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 two options for satisfying this classification's initial evidence requirements. First, a petitioner can demonstrate a one-time achievement that is a major, internationally recognized award. Alternatively, he or she 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).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the filings 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).[1] This two-step analysis is consistent with our holding that the "truth is to be determined not by the quantity of evidence alone but by its quality," as well as the principle that we examine "each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true." *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

II. ANALYSIS

The Petitioner previously worked as an engineer before obtaining a degree in Master of Business Administration from the [redacted] and co-founding [redacted] The company develops mini-grid electrical plants that utilize rice husk biomass as an energy source in locations not served by a major electric grid. The Director found that while the Petitioner performed in a leading or critical role for [redacted] which enjoys a distinguished reputation,[2] he did not meet any additional criteria. The Director discounted any documentation he considered to be outside the general field of business management.

On appeal, the Petitioner contends that his field is management of a startup focused on renewable energy.[3] While we find that description too narrow, we agree that evidence of the Petitioner's expertise in renewable energy business operations is relevant. Although the appellate brief addresses several additional criteria, we will discuss the most persuasive assertions below. Based on a review of the record, we conclude that the Petitioner has also been the subject of published material in major media and has judged the work of others in the same or a related field.[4]

[1] This case discusses 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).
[2] 8 C.F.R. § 204.5(h)(3)(viii).
[3] The Petitioner initially organized his company in India under a different name in 2007.
[4] 8 C.F.R. § 204.5(h)(3)(iii), (iv).

A. Initial Evidentiary Criteria

> *Published materials about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.* 8 C.F.R. § 204.5(h)(3)(iii).

While we agree with the Director that much of the published material is not about the Petitioner but his business, there is documentation in the record that meets this criterion. Specifically, [redacted] which appeared in the [redacted] begins by discussing the Petitioner's childhood and education before describing how he formed [redacted] with two other individuals. We are satisfied that this article is sufficiently "about" the Petitioner, relating to his work in the field. In addition, the [redacted] is major media. Accordingly, the Petitioner has satisfied 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).

As the Director noted, much of the material relating to this criterion confirms that various entities invited the Petitioner to serve as a judge, but not that he did so. Nevertheless, the Petitioner has presented evidence corroborating that he actually served as a judge. Specifically, an email message from [redacted] thanks him for volunteering as a semi-final judge for the [redacted] at the [redacted] and notes that he has "a few projects that have yet to be scored." As her wording indicates that he had completed at least some of his assigned reviews, the record demonstrates by a preponderance of the evidence that he indeed judged submissions for the event. [redacted] chief executive officer (CEO) of [redacted] explains that in this role for [redacted] the Petitioner evaluated business plans and provided extensive feedback to participants.[5] For the above reasons, he has satisfied this criterion.

B. Final Merits Determination

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. If so, a petitioner has met the requisite burden of proof and established eligibility for visa classification as an individual of "extraordinary ability." *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20.

[5] While we agree with the Director that [redacted] who professes no affiliation with [redacted] or the [redacted] does not have firsthand knowledge of the Petitioner's participation, we will consider his explanation of what that competition involves.

The documentation in the record supports a finding of extraordinary ability. The strongest items relate to the prestige of which the Petitioner founded and still manages. The company was a finalist for the and won an [6] Taking several exhibits together, the preponderance of the evidence confirms that has received significant financing from independent sources. For example, the made a grant of $750,000 to fund an project. In addition, a Memorandum of Understanding among (an organization that promotes human rights), and the reflects that will provide funding to and for a mini-grid project.

has also been the subject of articles in major media and case studies at prestigious independent institutions, such as the A post-filing nine-minute interview with the Petitioner about on a nationally broadcast program on a television station shows that recognition of and his work continues. That the Petitioner co-founded and continues to serve in an executive capacity for this company is commensurate with acclaim in the field. In addition, the fact that the detailed how the Petitioner came to form and that the with which he has no affiliation, requested him to judge business plans for the event are indicative of his recognition in the field well beyond his immediate circle of colleagues.

Moreover, the Petitioner has offered additional materials that support a finding of eligibility. For example, he has verified that he served as a judge at the event and demonstrated that he was invited to do so on multiple occasions by independent institutions such as the and the The invitation from from the indicates that he is asking the Petitioner to serve as a judge based on his management of a "successful multiple bottom line" company.

In addition, organizers of several summits, workshops, and conferences sent personal requests to the Petitioner seeking his attendance as a guest speaker, panel moderator, or chair. For example, the requested that he participate in a ministerial roundtable. The Petitioner also participated in a panel at a conference that the the and the organized. Post filing, of asked the Petitioner to speak at a summit that expects 400 invite-only guests from across the clean energy value chain. Finally, the covered the Petitioner's travel and lodging expenses to participate as an energy access expert at a workshop. All of the above documents in the aggregate corroborate that the Petitioner qualifies for the classification as an individual of extraordinary ability in business.

[6] While other awards are referenced in the record, the evidence is either ambiguous, unsigned, or is from individuals who do not profess firsthand knowledge of the awards.

III. CONCLUSION

The Petitioner has demonstrated his eligibility as an individual of extraordinary ability through the satisfaction of three criteria and evidence indicative of his recognition in the field.

ORDER: The appeal is sustained.

Cite as *Matter of M-K-S-*, ID# 430647 (AAO July 26, 2017)