U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF D-M-O-

DATE: MAR. 29, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a supervisor of thermal heavy oil steam flood recovery, 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 Acting Director of the Nebraska Service Center denied the Form I-140, Immigrant Petition for Alien Worker, concluding that the Petitioner had satisfied only two of the initial evidentiary criteria, of which he must meet at least three.

On appeal, the Petitioner presents a brief, contending that he satisfies at least three criteria.

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

I. LAW

Section 203(b)(1)(A) of the Act makes visas available to qualified 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 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). If that petitioner does not submit this evidence, then 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 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). 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 is a supervisor for [redacted] in California. Because he has not indicated or established that he has received a major, internationally recognized award, he must satisfy at least three of the ten criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). In denying the petition, the Director found that the Petitioner met only two of the initial evidentiary criteria, leading or critical role under 8 C.F.R. § 204.5(h)(3)(viii) and high salary under 8 C.F.R. § 204.5(h)(3)(ix).

On appeal, the Petitioner maintains that he meets three additional criteria, discussed below. We have reviewed all of the evidence in the record and conclude that it does not support a finding that the Petitioner satisfies the plain language requirements of at least three 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).

The Petitioner contends that his selection to serve in [redacted] Heavy Oil Steam Flood Specialist Program (HOSFSP) meets this criterion. On appeal, he references a letter from [redacted] vice president of the [redacted] who stated that "[t]he goal of [HOSFSP] is to develop the next generation of specialists in the industry." Further, [redacted] indicated that

"[t]his elite group of engineers are part of [redacted] and were organized to develop and maintain cutting edge technology and processes to maintain [redacted] worldwide domination in Heavy oil leadership."

First, we note that the Petitioner is not a member in an association within the meaning of 8 C.F.R. § 204.5(h)(3)(ii). Rather, he serves in [redacted] HOSFSP as part of his employment, and participation appears to be limited to those employed with [redacted] Therefore, the Petitioner's service with HOSFSP is more appropriate to be considered under the leading or critical role criterion at 8 C.F.R. § 204.5(h)(3)(viii), which is discussed later in this decision.

Notwithstanding the above, in order to satisfy this criterion, the Petitioner must show that membership in the associations is based on being judged by recognized national or international experts as having outstanding achievements in the field for which classification is sought.[1] While [redacted] indicated that "[w]e carefully selected him to join this team in the discipline of Heat Management Specialist [sic]," the letter does not establish that outstanding achievements are an essential requirement to serve with HOSFSP. Moreover, [redacted] did not explain the selection process and show whether recognized national or international experts judge the employee's participation in the program. Accordingly, 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).

In support of this criterion, the Petitioner contends that his job duties at [redacted] satisfy this criterion. Specifically, the Petitioner indicated that he submitted evidence of his involvement in providing responses for employees' performance appraisals. In addition, he presented documentation showing his solicitation of feedback for action and agenda items for various projects in Indonesia as an advisor on asset development and reservoir management teams. Further, he offered evidence reflecting his involvement with the [redacted] such as [redacted] recognition of [redacted] 'Fantastic 4' for outstanding cross-company collaboration in addressing the [redacted] 'lack of gas' situation"; his poster presentation entitled, [redacted]'; and his participation in a heat management consulting engagement. Finally, the Petitioner references a letter from [redacted] senior reservoir and production engineer for [redacted] America, who stated that he "interacted with [the Petitioner] involving complex subsurface evaluation projects that demand high technical analysis and advanced understanding of multiple disciplines."

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[1] *See* USCIS Policy Memorandum PM-602-0005.1, *Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator's Field Manual (AFM) Chapter 22.2, AFM Update AD11-14* 6 (Dec. 22, 2010), https://www.uscis.gov/sites/default/files/ocomm/ilink/0-0-0-6423.html.

This regulatory criterion requires a petitioner to show that he has acted as the judge of the work of others in the same or an allied field of specialization.[2] In this case, the Petitioner has not shown that his participation in projects and providing and soliciting feedback in an informal capacity equates to participation as a judge of the work of others in the field. The phrase "a judge" implies a formal designation in a judging capacity, either on a panel or individually, as specified by the regulatory criterion. The Petitioner's evidence, however, does not establish that he was designated as a judge in a formal capacity of the work of others consistent with this regulatory criterion. Accordingly, the Petitioner has not demonstrated that he meets 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 not only that he has made original contributions but that they have been of major significance in the field. For instance, a petitioner may show that his 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 his overall field. The Petitioner argues that he invented back spin technology for progressive cavity pumps (PCP) that has been adopted and used worldwide in [redacted] operations and by competitors. In addition, he contends that his work with surface steam distribution for thermally enhanced recovery projects has been applied to heavy oil fields.

Regarding PCP, the Petitioner mentions a letter from [redacted] sales and operations manager for [redacted] in Columbia, who stated that "[the Petitioner] developed a methodology for PCP applications to significantly reduce production loss during power failures." Although [redacted] indicated that this process "was emulated by companies utilizing PCPs worldwide," he did not identify which companies have used the methodology and where this process has been implemented. Because the letter lacks specific information, it is not sufficient to establish that the Petitioner's PCP methodology is considered an original contribution of major significance to the overall field.[3]

As it relates to surface steam, the Petitioner references a letter from [redacted] reliability lead for [redacted] who explained that the Petitioner installed steam injection heat measurement technology (continuous Q-tests) on each injection well in the entire steamflood, "which had never been done before within [redacted]" Further, [redacted] stated that "Q-testing has been in use in [redacted] steamfloods for over 25 years" and "[t]his is allowing us to economically right-size the frequency of Q-testing at other [redacted] steamfloods, in California, Indonesia, and around the world." While [redacted] indicated that the Petitioner developed the idea of injecting heat measurement into each well in the entire steamflood, he did not demonstrate that the concept of Q-testing is an original

[2] *See* USCIS Policy Memorandum PM-602-0005.1, *supra*, at 8.

[3] *See* USCIS Policy Memorandum PM-602-0005.1, *supra*, at 9; *see also Visinscaia*, 4 F. Supp. 3d at 134-35 (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).

contribution of the Petitioner, as [redacted] utilized the technology long before his employment. Moreover, [redacted] discussed the impact of the Petitioner's method to [redacted] steamfloods rather than to the greater field. [redacted] did not show, for example, that the Petitioner's method has been extensively implemented outside of [redacted]

The letters considered above primarily contain attestations of the Petitioner's status in the field without providing specific examples of how he made original contributions that rise to a level consistent with major significance. 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. *Kazarian*, 580 F.3d at 1036, *aff'd in part* 596 F.3d at 1115, 1122. 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 these reasons, the Petitioner did not demonstrate that he 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).

The Director determined that the Petitioner satisfied this criterion. As discussed in this decision, the Petitioner documented his service in HOSFSP within [redacted] and the record demonstrates that he has otherwise contributed to the successes of the company. Accordingly, we agree with the Director's findings, and the Petitioner established that he performed in a critical role.

> *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 Director found that the Petitioner met this criterion. The record contains evidence showing that his salary is approximately twice as much as the wages of others in his field earning at the high end of the spectrum. Therefore, we concur with the Director's determination, and the Petitioner demonstrated that he satisfies 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. 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 level of expertise required for the classification sought. For the foregoing reasons, the Petitioner has not shown that he qualifies for classification as an individual of extraordinary ability.

ORDER: The appeal is dismissed.

Cite as *Matter of D-M-O-*, ID# 1066496 (AAO Mar. 29, 2018)