U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 12018535

Date: MAR. 29, 2021

Appeal of Vermont Service Center Decision

Form I-129, Petition for Nonimmigrant Worker (Extraordinary Ability – O)

The Petitioner, a tech platform for connecting vendors to enterprises, seeks to classify the Beneficiary as a foreign national of extraordinary ability in business. To do so, the Petitioner seeks O-1 nonimmigrant classification, available to foreign nationals who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation. See Immigration and Nationality Act (the Act) section 101(a)(15)(O)(i), 8 U.S.C. § 1101(a)(15)(O)(i).

The Director of the Vermont Service Center denied the petition, concluding that the Petitioner did not satisfy, as required, the alternative evidentiary criteria applicable to individuals of extraordinary ability in business, either a major, internationally recognized award or at least three of eight possible forms of documentation. 8 C.F.R. § 214.2(o)(3)(iii)(A)-(B).

On appeal, the Petitioner offers additional evidence and asserts that the Beneficiary meets the regulatory requirements for O-1 classification.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon de novo review, we will dismiss the appeal.

I. LAW

As relevant here, section 101(a)(15)(O)(i) of the Act establishes O-1 classification for an individual who has extraordinary ability in the sciences, arts, education, business, or athletics that has been demonstrated by sustained national or international acclaim, whose achievements have been recognized in the field through extensive documentation, and who seeks to enter the United States to continue work in the area of extraordinary ability. Department of Homeland Security (DHS) regulations define "extraordinary ability in the field of science, education, business, or athletics" as "a level of expertise indicating that the person is one of the small percentage who have arisen to the very top of the field of endeavor." 8 C.F.R. § 214.2(o)(3)(ii).

Next, DHS regulations set forth alternative evidentiary criteria for establishing a beneficiary's sustained acclaim and the recognition of achievements. A petitioner may submit evidence either

of "a major, internationally recognized award, such as a Nobel Prize," or of at least three of eight listed categories of documents. 8 C.F.R. § 214.2(o)(3)(iii)(A)-(B).

The submission of documents satisfying the initial evidentiary criteria does not, in and of itself, establish eligibility for O-1 classification. See 59 Fed. Reg. 41818, 41820 (Aug. 15, 1994) ("The evidence submitted by the petitioner is not the standard for the classification, but merely the mechanism to establish whether the standard has been met.") Accordingly, where a petitioner provides qualifying evidence satisfying the initial evidentiary criteria, we will determine whether the totality of the record and the quality of the evidence shows sustained national or international acclaim such that the individual is among the small percentage at the very top of the field of endeavor. See section 101(a)(15)(o)(i) of the Act and 8 C.F.R. § 214.2(o)(3)(ii), (iii).[1]

II. ANALYSIS

The Beneficiary's curriculum vitae indicates his most recent employment since 2016 as a global account manager of [redacted] at [redacted] in Israel. The Petitioner, a Delaware corporation co-founded by the Beneficiary in December 2018 and based in New York, is self-described as a platform that "connects young startups without a marketing and sales team with experienced marketing professionals." The Petitioner seeks to employ the Beneficiary as Chief Revenue Officer. It describes him as "an extraordinary business professional and innovator in Entrepreneurship Development Strategy in the Hi-Tech Industry."

A. Evidentiary Criteria

Because the Petitioner has not indicated or established that the Beneficiary has received a major, internationally recognized award, it must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B)(1)-(8).

The Petitioner submitted evidence relating to five of the eight alternate regulatory criteria. In denying the petition, the Director determined that the Petitioner fulfilled two of the initial evidentiary criteria, employment in a critical or essential capacity for distinguish organizations at 8 C.F.R § 214.2(o)(3)(iii)(B)(7) and high salary or other remuneration at 8 C.F.R § 214.2(o)(3)(iii)(B)(8). We will not disturb the Director's determination that these criteria have been met.

On appeal, the Petitioner asserts that the Beneficiary meets three additional criteria. After reviewing all the evidence in the record, we conclude that the Petitioner has not established that the Beneficiary satisfies the 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. § 214.2(o)(3)(iii)(B)(2)

[1] See also Matter of Chawathe, 25 I&N Dec. 369, 376 (AAO 2010), in which we held that, "truth is to be determined not by the quantity of evidence alone but by its quality."

The Petitioner did not initially claim that the Beneficiary meets this criterion. Within the Petitioner's response to the Director's request for evidence (RFE), it asserted that the Beneficiary satisfies this criterion based upon his membership in the Forbes Business Council. The Director determined that the Petitioner's evidence did not fulfill this criterion. In order to satisfy this criterion, the Petitioner must show that the Beneficiary is a member of an association and that such membership is based on being judged by recognized national or international experts as having outstanding achievements in the field for which classification is sought.

The Petitioner submitted a letter from [redacted] for Forbes Councils, who confirms that since December 2019 the Beneficiary has been a member of the Forbes Business Council, "an invitation-only organization for business owners and leaders." She also provides that "[w]e don't share every detail of the selection process" but explains that "certain core criteria" are that prospective members of the Forbes Business Council must be the "owner, founder, or executive leader of a business . . . [g]enerating at least $500,000 in annual revenue or funding." In addition, the Petitioner highlighted statements from the organization's website, reflecting that membership is based on "an application and committee review" and that "[m]embers are selected for the Council based on their depth and diversity of experience." Based on the limited description of the selection process, it does not appear to involve additional requirements or substantive review by national or international experts to determine whether a given applicant has demonstrated outstanding achievements.

The record does not substantiate that the Forbes Business Council selection process extends beyond requiring that an applicant be an owner, founder or executive leader of a company that meets the stated income or financing requirements, which in-and-of-itself the Petitioner did not show is tantamount to an outstanding achievement. According to the information provided regarding the membership requirements, it is reasonable to conclude that an applicant will be granted membership who meets this threshold. Moreover, the Petitioner did not demonstrate that membership with Forbes Business Council is judged by recognized national or international experts. The Petitioner did not establish, therefore, that Forbes Business Council requires outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.

Accordingly, the Petitioner did not show that the Beneficiary satisfies this criterion.

> Published material in professional or major trade publications or major media about the alien, relating to the alien's work in the field for which classification is sought, which shall include the title, date, and author of such published material, and any necessary translation. 8 C.F.R. § 214.2(o)(3)(iii)(B)(3)

The Director determined that the published materials submitted do not meet this criterion, because the Petitioner did not present evidence sufficient to demonstrate that they were published in professional or major trade publications or major media. The Director also found that the documentation provided does not meet this criterion, because it does not address how "the [B]eneficiary's achievements are outstanding, that he has a record of sustained national or international recognition and is acknowledged as one of the small percentage who has risen to the very top of his field." On appeal, the Petitioner asserts that the level of the Beneficiary's expertise as discussed in the articles should not be the determining factor of whether the published materials meet this criterion. We agree. If the Petitioner

submits published material in professional or major trade publications or other major media about the Beneficiary relating to his work in the field, we will conclude that the evidence satisfies the plain language of this criterion.[2]

The Petitioner provided an article entitled [redacted] [the petitioning organization] [redacted]," published on the English-language Israeli website CTech. The article announced the Petitioner's seed round, noted that the Beneficiary is its co-founder, and related that it connects young startups without a marketing and sales team with experienced marketing professionals. However, the article does not include the author of the material and is missing the date of publication. The inclusion of the title, date, and author of the material is not optional but a regulatory requirement. In addition, the article was not accompanied by supporting evidence demonstrating that it was published in professional or major trade publications or other major media. The record contains ranking and traffic data from www.similarweb.com, www.tmnww.com, www.ifra.com, and www.calcalist.co.il regarding the website of CTech's parent company, Calcalist, but not regarding CTech.

In addition, the Petitioner submitted an article entitled [redacted]," published on the Israeli website www.themarker.com. The article discusses the Beneficiary's decision to relocate to the United States, describes how the petitioning company works to connect young startups with experienced marketing professionals, and mentions his prior work experience in hi-tech technical, operational, and international sales positions. The article is missing the date of publication. Further, although the Petitioner submitted supporting evidence from SimilarWeb, it does not establish that The Marker, which ranks 34th among Israeli business websites and 59th in Israel overall, is considered to be a major medium. While the Petitioner's submission on appeal includes articles dated 2020 from the websites www.journalism.co.il and www.globes.co.il reporting, respectively, the findings of a 2019 survey showing an increase in newspaper exposure, including for the print edition of The Marker, and indicating The Marker leads Globes and Calcalist in monthly user data, the Petitioner did not explain or show the significance of the figures, indicating major status or standing for the online version of The Marker.

The Petitioner also provided online articles about the Beneficiary and related to his work which were published by www.geektime.com and www.alleywatch.com. The article from www.alleywatch.com does not include the author of the material. In addition, the articles were not accompanied by supporting evidence demonstrating that they were published in professional or major trade publications or other major media. A screenshot from www.advertising.alleywatch.com indicates it is "a global media, technology, and branding company . . . ." A screenshot from www.geektime.com states it is "the largest and leading technology site in Israel." On appeal, the Petitioner provides a screenshot from www.crunchbase.com in which Geektime indicates it is "the largest international tech blog located outside the U.S." and "boasts a reader base of more than 1M unique visitors a month."

[2] The level of the Beneficiary's expertise would be more relevant to an examination of the totality of the evidence. As discussed above, where a petitioner provides qualifying evidence satisfying the initial evidentiary criteria, we will determine whether the totality of the record and the quality of the evidence shows that the beneficiary has achieved a level of expertise indicating that he is one of that small percentage who have risen to the very top of the field of endeavor and that the beneficiary has sustained national or international acclaim and that his achievements have been recognized in the field of expertise through extensive documentation. 8 C.F.R. § 214.2(o)(3)(ii),(iii).

An excerpt from Geektime's 2017 annual report indicates the company "boasts a reader base of more than 2,000,000 unique visitors a month around the world." USCIS need not rely solely on self-serving assertions.[3] The Petitioner did not provide on-line circulation figures for these publications or comparative circulation or distribution figures in support of a claim that either of these publications would be considered major media consistent with this regulatory criterion.

Further, the Petitioner submitted a Spotify screenshot of a podcast posted on ' ' titled ' ' The Petitioner claimed that the podcast reflected an interview of the Beneficiary. However, the Petitioner did not provide a transcription of the podcast demonstrating published material about the Beneficiary relating to his work. Moreover, the Petitioner did not establish that ' ' represents a major medium.

The remaining articles do not show published material about the Beneficiary relating to his work. Although they briefly mention his name or quote him for source material, they are not about him but pertain to such topics as starting a business in another country and common mistakes found in sales teams. For example, the Petitioner provided an article from www.resources.workable.com, self-described as "the world's leading hiring platform," in which the Beneficiary is quoted regarding the The record also contains an article from www.blog.powertofly.com, described as a company launched "to connect Fortune 500 companies and fast-growing startups with women." The Beneficiary is quoted as recommending Those articles do not discuss the Beneficiary. Moreover, the Petitioner did not demonstrate that either of the websites constitute professional or major trade publications or other major. While a screenshot from Power to Fly provided statistics, such as "12 countries, 1.55M+ Slack messages," as discussed previously, USCIS need not rely solely on self-serving assertions. The Petitioner did not provide on-line circulation figures for these websites or comparative circulation or distribution figures, indicating major status or standing.

For the foregoing reasons, the Petitioner did not establish that the Beneficiary meets this criterion.

> Evidence of the alien's authorship of scholarly articles in the field in professional journals, or other major media. 8 C.F.R. § 214.2(o)(3)(iii)(B)(6)

The Petitioner did not initially claim that the Beneficiary satisfies this criterion. Within the Petitioner's RFE response it asserted that the Beneficiary satisfies this criterion based upon the Beneficiary's article ' ' published on the website www.forbes.com.[4] The Director determined that the article did not meet this criterion because it was published on 2020, subsequent to the filing of this petition on January 3, 2020. On appeal, the Petitioner argues that the article satisfies this criterion because it was accepted for publication prior

[3] See Braga v. Poulos, No. CV 06 5105 SJO (C. D. CA July 6, 2007) aff'd 2009 WL 604888 (9th Cir. 2009) (concluding that the AAO did not have to rely on self-serving assertions on the cover of a magazine as to the magazine's status as major media).

[4] The Petitioner previously claimed that the Beneficiary also meets this criterion based on an article published on www.forbes.com in 2020. On appeal, the Petitioner claims eligibility based on the article mentioned above and does not address this article.

to the date of filing, and points to documentation in the record suggesting that the article was accepted for publication on [redacted] 2019.

The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1). The regulation requires evidence of scholarly articles in professional or major trade publications or other major media. Thus, the only evidence we can consider is evidence of scholarly articles that had already appeared in such publications prior to or at the time of filing. For these reasons, the Petitioner did not demonstrate that the Beneficiary fulfills this criterion.

III. CONCLUSION

The record does not satisfy, as required, the evidentiary criteria applicable to individuals of extraordinary ability in business: a major, internationally recognized award or at least three of eight possible forms of documentation. 8 C.F.R. § 214.2(o)(3)(iii)(A)-(B). Consequently, the Petitioner has not established that the Beneficiary is eligible for the O-1 visa classification as an individual of extraordinary ability in business. 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.