U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF T-D- CORP.

DATE: MAY 12, 2017

APPEAL OF VERMONT SERVICE CENTER DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner, a digital media corporation, seeks to classify the Beneficiary as a foreign national of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 101(a)(15)(O)(i), 8 U.S.C. § 1101(a)(15)(O)(i). This O-1 classification makes nonimmigrant visas 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.

The Director of the Vermont Service Center denied the petition, concluding that the record did not establish, as required, that the Beneficiary met the necessary three evidentiary criteria. The Director reaffirmed that decision on motion.

On appeal, the Petitioner resubmits exhibits already part of the record and asserts generally that they meet the various evidentiary requirements.

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

I. LAW

Section 101(a)(15)(O)(i) of the Act provides classification to a qualified beneficiary who has extraordinary ability in the sciences, arts, education, business, or athletics which 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. The regulation at 8 C.F.R. § 214.2(o)(3)(ii) provides, in pertinent part: "*Extraordinary ability in the field of science, education, business, or athletics* means 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."

The regulation at 8 C.F.R. § 214.2(o)(3)(iii) sets forth a multi-part analysis for demonstrating a beneficiary's eligibility. First, a petitioner can demonstrate a beneficiary's sustained acclaim and the recognition of the beneficiary's achievements in the field through a major internationally recognized award. 8 C.F.R. § 214.2(o)(3)(iii)(A). If a petitioner does not submit this documentation, then that petitioner must satisfy at least three of the eight categories listed at 8 C.F.R. § 214.2(o)(3)(iii)(B)(*1*)-

(*8*). If a petitioner shows that certain criteria in paragraph (o)(3)(iii)(B) of this section do not readily apply to a beneficiary's occupation, that petitioner may submit comparable evidence in order to show the beneficiary's eligibility. 8 C.F.R. § 214.2(o)(3)(iii)(C).

The submission of documents relating to at least three criteria does not, in and of itself, establish eligibility for O-1 classification. *See* 59 Fed. Reg. 41818, 41820 (Aug. 15, 1994). In addition, we have held that, "truth is to be determined not by the quantity of evidence alone but by its quality." *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). That decision explains that, pursuant to the preponderance of the evidence standard, we "must 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." *Id.* Accordingly, where a petitioner provides qualifying evidence under at least three criteria, we will determine whether the totality of 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.

II. ANALYSIS

The Petitioner seeks to employ the Beneficiary as a user experience designer and web developer for three years at an annual salary of $48,000. The Petitioner maintains that the Beneficiary meets seven of the eight criteria, of which he must satisfy at least three. The Director found that the Petitioner has met only one of them. On appeal, while the Petitioner lists each exhibit that was submitted, it does not address any of the Director's specific concerns. For the reasons discussed below, the record supports the Director's conclusions.

Documentation of the alien's receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor. 8 C.F.R. § 214.2(o)(3)(iii)(B)(1).

The Director determined that the awards for participation in exercises were not nationally or internationally recognized prizes in the Beneficiary's field of endeavor, web design. The Petitioner has never explained the relevance of these certificates to web design. Rather, before the Director, the Petitioner argued that they were "in a professional excellence concept." The plain language of the regulation, however, requires that they be issued for excellence in the Beneficiary's field of endeavor. Accordingly, they cannot serve to meet this criterion.

The record also contains a certificate from an organization the Beneficiary founded after meeting with The record contains some documentation about the purpose of but no information about the significance of recognition certificates. For example, the Petitioner did not present materials showing that an independent

[1] is a not for profit organization. It describes itself as ' *See* About Us, https://www com/about-us/ (last visited May 11, 2017). Based on success, spin-off groups have been started in many other cities.

media source reported on the Beneficiary's selection for the honor. Without evidence reflecting that the award is nationally or internationally recognized, it cannot serve to meet this criterion.

> *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).

The record contains a letter from executive director of the advising that the Beneficiary is "a registered member of [their] community and actively participates in the events planned by the association." The Petitioner supplied information about the association's tech week and the benefits of membership, none of which indicates that it requires outstanding achievements of its members. Similarly, the Petitioner documented the Beneficiary's membership in the but offered no evidence that the entity has membership requirements. Rather, the materials encourage individuals to join the group where Finally, while the Petitioner included the Beneficiary's experience with under this criterion, founding a group is not admission as a member to an association. For the above reasons, the Petitioner has not satisfied 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 record includes numerous excerpts from blogs and online media sites that briefly mention the Beneficiary. For those from foreign language sources, the Petitioner did not offer a copy of the original document and a complete, certified translation of the foreign language materials as required. 8 C.F.R. § 103.2(b)(3), (4). In several cases, the Petitioner provided only translations by Google, which do not comply with the regulatory requirement for either a copy of the original, or the requirement for a certified translation. In addition, the original sources of the posts are not clear based on the translations from Google. For those that are discernible, the Petitioner did present some data relating to the rank of the websites. Most of them, however, do not rank very highly. For example, the website of one of the Beneficiary's former teachers, ranks 3,723,845 globally and shows no national rank. As a result, the record does not show that these posts occurred in professional or major trade publications or major media.

In addition, many of the posts are not "about" the Beneficiary. For example, one about the conference names the Beneficiary as one of its speakers. Similarly, a printout with information about an episode of the podcast at merely lists the Beneficiary as one of several individuals who recorded These listings do not constitute material about the Beneficiary and therefore do not satisfy this criterion.

Evidence of the alien's participation on a panel, or individually, as a judge of the work of others in the same or in an allied field of specialization to that for which classification is sought. 8 C.F.R. § 214.2(o)(3)(iii)(B)(4).

The Beneficiary served as a juror at a event and at a high school science fair. The Director concluded that the record did not establish that either one involved judging the work of others in the Beneficiary's field or an allied field of specialization. On appeal, the Petitioner references previously submitted items, but does not elaborate as to how either participation involved judging web design or an allied field. While a science fair might include exhibits involving web design or an allied field, it is the Petitioner's burden to demonstrate that the Beneficiary did, in fact, judge such work. The record does not contain any evidence relating to the types of science projects the Beneficiary judged. Rather, the Petitioner states that the Beneficiary analyzed the competitors' "use of the scientific method to prove or disprove their [hypotheses]." As the Petitioner has not documented that the Beneficiary judged web design or an allied field, it has not satisfied this criterion.

Evidence of the alien's original scientific, scholarly, or business-related contributions of major significance in the field. 8 C.F.R. § 214.2(o)(3)(iii)(B)(5).

Initially, the Petitioner affirmed that the Beneficiary started developing websites in 2004, completing over 60 different sites for different industries and managing their online strategy and helping them to expand their businesses. The Director acknowledged that the Beneficiary had performed services for some notable clients, but concluded that the record did not demonstrate how his designs constitute contributions of major significance in the field of web design. In support of this criterion, the Petitioner has provided letters, printouts of websites and logos, statistics from relating to websites on which the Beneficiary worked, as well as by

The letters provided indicate the Beneficiary is an active web developer who has worked on many different projects. an associate professor at the contends that the Beneficiary "achieved both national and international recognition for his web design achievements as evidence[d] by the projects listed below." named projects, but did not articulate how any of them garnered the stated acclaim for the Beneficiary.

Several of the remaining letters provide general praise, without identifying specific contributions and explaining their impact in the field. For example, chief executive officer (CEO) of explains that the Beneficiary worked for that company as an information engineer. praises the Beneficiary's ability to understand consumer preferences and clients' needs and create successful projects that engage consumers at various levels. CEO of describes their work together at that company. According to

the Beneficiary managed over 15 projects, performing research, coming up with innovative ideas, and developing "all the necessary web tools for our project to be successful." names as a company with which the Beneficiary worked.

Other letters provide more detail about the Beneficiary's services to a particular entity, but do not clarify how these responsibilities constitute contributions to the wider field. office manager for confirms that the Beneficiary was a webmaster for their and brands at the office in 2011 and 2012. chief digital officer for asserts that the number of users for their website, has increased over 2000 percent and their content conversion time rate has improved by more than 300 percent since the Beneficiary designed and developed their main site as well as their first logo and the concept for their corporate image. While the Beneficiary contributed to these companies, neither letter explains how these benefits rise to the level of contributions of major significance in the field. For example, they do not describe how web designers in the field at large have been influenced by the Beneficiary's work.

Other recommendation writers emphasize the Beneficiary's work with professional associations. According to the Beneficiary created "the most important tech association in his home city of Venezuela," through which he organized a ' with over 30 talks that brought together "over one hundred information technology enthusiasts, entrepreneurs and developers." current president of confirms that the Beneficiary started that entity and was president for several years. affirms that, in this role, the Beneficiary "gave over 40 talks about technology, web design, development and many tech-related topics." An example of the benefit of this organization comes from president of who indicates that he met his partners through

While performs a useful service that is beneficial to participants, it is based on a formula initiated elsewhere. identifies the inspiration for this community as in and the Beneficiary notes in one of his blog posts that began in California. Importantly, this criterion requires original contributions made by the Beneficiary. His successful replication of existing organizations and events, while laudable, does not meet the plain language of this criterion. In addition, the record does not demonstrate their influence in the field of web design as a whole.

president of discusses the Beneficiary's services as a member of the board of directors for his foundation and explains that its purpose is to gather expat entrepreneurs living in Again, while the Beneficiary helped bring together people with common interests, this letter does not illustrate how he made original contributions that impacted the field as a whole.

Finally, provides a guide to themes, trends, and styles in website design. It contains numerous pages each filled with multiple website examples. The Beneficiary's website appears on page 161, along with four others, as an example of websites using the color blue.

While the Beneficiary is credited, the Petitioner has not established that appearing as one of hundreds of websites in a guidebook on website design has influenced the field as a whole. For all of the reasons discussed above, the Petitioner has not satisfied 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 record contains several blog posts by the Beneficiary. The Director concluded that the Petitioner had not demonstrated that they constitute scholarly articles or that they appeared in professional journals or other major media. On appeal, the Petitioner does not address the Director's concerns. Rather, it requests that we review the previously submitted evidence.

Before the Director, the Petitioner focused on the Beneficiary's post describing his encounter with at an event. The Petitioner does not explain, however, why a story about meeting is a scholarly article. Similarly, the record does not demonstrate that the Beneficiary's other blog entries are scholarly in nature. The subjects of these pieces include the Beneficiary's reflections on the loss of an editorial about flexible work hours, and his complaints about being stuck with The record also includes a post on that is promoting a event. The Petitioner does not offer rationale for considering these to be scholarly articles and we conclude that they are not. Moreover, the English version of the article is translated through Google Translate, which does not meet the requirements for a complete, certified translation. 8 C.F.R. § 103.2(b)(3).

In addition to posts and editorials, the Petitioner relies on the book, The Beneficiary is not an author, but appears in this book as the creator of one website out of hundreds shown in the book, including four others on the same page. In addition, the book is not a professional journal and the record contains no data about its sales as evidence that it constitutes major media. For the above reasons, the Petitioner has not offered documentation that satisfies this criterion.

Evidence that the alien has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation. 8 C.F.R. § 214.2(o)(3)(iii)(B)(7).

The Director found that the Petitioner satisfied this criterion. Given the Beneficiary's roles for and the record supports that conclusion.

Evidence that the alien has either commanded a high salary or will command a high salary or other remuneration for services, evidenced by contracts or other reliable evidence. 8 C.F.R. § 214.2(o)(3)(iii)(B)(8).

The Petitioner has not addressed this criterion. While the record contains some evidence of the wages it will pay the Beneficiary and wages he has previously received, nothing in the record suggests that these wages are high. Therefore, the Petitioner has not satisfied this criterion.

III. CONCLUSION

The Petitioner has satisfied only one of the evidentiary criteria, of which a Beneficiary must meet at least three. As a result, the Petitioner has not submitted the required initial evidence to establish the Beneficiary's eligibility for the extraordinary ability nonimmigrant classification.

ORDER: The appeal is dismissed.

Cite as *Matter of T-D- Corp.*, ID# 313325 (AAO May 12, 2017)