U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF P-D-

DATE: MAY 16, 2017

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a petroleum engineer, seeks classification as an individual of extraordinary ability in the sciences. *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 Texas Service Center denied the Form I-140, Immigrant Petition for Alien Worker, concluding that the Petitioner had not satisfied any of the initial evidentiary criteria, of which he must meet at least three.

On appeal, the Petitioner submits a brief, stating that he meets at least three criteria and that he is eligible for the classification.

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

I. LAW

Section 203(b) of the Act states in pertinent part:

> (1) Priority workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):
>
> (A) Aliens with extraordinary ability. – An alien is described in this subparagraph 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 a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the recognition of his or her 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 he or she must provide documentation that meets at least three of the 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).

Satisfaction of at least three criteria, however, does not, in and of itself, establish eligibility for this classification. *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 it fulfills the required number of criteria, is 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), *aff'd*, 683 F.3d 1030 (9th Cir. 2012); *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (holding that the "truth is to be determined not by the quantity of evidence alone but by its quality" and that U.S. Citizenship and Immigration Services (USCIS) examines "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"). Accordingly, where a petitioner submits 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 is a petroleum engineer who is employed at [redacted] as a well completion project manager. Because he 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 found that he did not meet any of the regulatory criteria. On appeal, the Petitioner maintains his eligibility for the judging criterion under 8 C.F.R. § 204.5(h)(3)(iv), the original contributions criterion at 8 C.F.R. § 204.5(h)(3)(v), the leading or critical role criterion under 8 C.F.R. § 204.5(h)(3)(viii), and the high salary criterion under 8 C.F.R. § 204.5(h)(3)(ix). We have reviewed all of the evidence in the record, and determined that it does not support a finding that the Petitioner meets at least three criteria.

A. Evidentiary Criteria[1]

> *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).

The Petitioner offered emails reflecting his managerial duties of reviewing resumes for prospective workers and processing promotions for his current subordinates, as well as conducting leadership assessments for employee development programs. In addition, he submitted three recommendation letters from employees at who attested to his involvement in the hiring and recruiting of workers, including requests to review the credentials of individuals outside of his employer.

The regulation at 8 C.F.R. § 204.5(h)(3)(iv) requires evidence that the Petitioner has served as "a judge" of the work of others. The phrase "a judge" implies a formal designation in a judging capacity, either on a panel or individually as specified under the regulation. The documentation mentioned above indicates that the Petitioner supervised his subordinates and made personnel decisions as part of his role as a well completion project manager for He, however, did not demonstrate that he actually served as a judge consistent with the plain language of this regulatory criterion. Not every instance of reviewing another's work as part of one's job duties satisfies this criterion.

On appeal, the Petitioner references one of our unpublished decisions, in which we concluded that an editor-in-chief of a magazine satisfied this criterion, in part, because he reviewed the work of others before deciding whether to accept it for publication. *Matter of M-A-*, ID# 15319 (AAO Feb. 8, 2016). We also noted that the petitioner in *Matter of M-A-* served on an organization's prize selection committee and selected prize winners. Here, the Petitioner has not shown that his authority to make personnel decisions is similar to the duties of an editor who assessed submissions for publication purposes and who selected prize winners. Moreover, that decision was not published as a precedent and therefore does not bind USCIS officers in future adjudications. *See* 8 C.F.R. § 103.3(c). Finally, the regulations include a separate criterion for a petitioner's role within an organization, 8 C.F.R. § 204.5(h)(3)(viii), which is discussed below. Consistent with the regulatory requirement that a petitioner meet at least three separate criteria, we will generally not consider evidence relating to the leading or critical role criterion to satisfy this one. Therefore, the Petitioner has not established 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).

The Petitioner provided recommendation letters discussing his role of presenting and leading the implementation of technologies to the company's other global locations. For instance, global technical advisor, stated that the Petitioner led "[t]he

[1] We will discuss those criteria the Petitioner has raised and for which the record contains relevant evidence.

[that] was developed by to prevent sand production in unconsolidated open hole horizontal wells with unstable shales." In addition, indicated that "[i]n support of a new developed by called the ' the Petitioner co-authored a paper and spoke at annual gathering. Similarly, secretary of local government, talked about the Petitioner's presentations "on innovative technology" and "on innovative In order to meet this regulatory criterion, the Petitioner must show that his original contributions are of major significance in the field. Here, the original contributions referenced in the letters relate to technology developed by rather than by the Petitioner.

Moreover, while he provided copies of the slides that he presented on behalf of the Petitioner did not show that they are tantamount to original contributions of major significance in the field consistent with the regulatory criterion. *See 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). The Petitioner did not establish, for example, that his presentations impacted or influenced the field beyond or that they were of major significance in the field. Further, the record does not indicate that his presentations have been frequently cited by others or have otherwise significantly impacted the field. Publications and presentations are not sufficient under 8 C.F.R. § 204.5(h)(3)(v) absent evidence that they were of "major significance." In 2010, the *Kazarian* court reaffirmed its holding that we did not abuse our discretion in our adverse finding relating to this criterion because the contributions in question were not major. 596 F.3d at 1122. Accordingly, the Petitioner has not sufficiently demonstrated 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).

As discussed above, the Petitioner has submitted recommendation letters detailing his role in carrying out and representing innovative technologies. In this role, the letters indicated that his successes added to reputation in the field. The record also includes evidence of the company's distinguished reputation. Therefore, he has established that he meets this criterion.

> *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 Petitioner submits documentation showing numerous income sources for 2014 and 2015. The record reflects that he received a salary in addition to being compensated with allowances and incentives, such as car and housing allotments and stock options. In accordance with this regulatory criterion, he must demonstrate that he has commanded a high *salary* or that his *remuneration for services* is significantly high.

Although he offers several documents relating to his earnings for 2014 and 2015, the Petitioner has provided varying figures and has not established his actual salary or remuneration for those years. Specifically, according to his IRS Form W-2, Wage and Tax Statement, his wages, tips, and other compensation (box 1) for 2014 was $171,476.96. A supplement to Form W-2 noted that he received an additional $34,267 for ' NO W-2" for a total annual income of $205,743.96. Regarding his 2015 Form W-2, he earned $186,874.89. In addition, he provided a letter from indicating that his taxable income in Nigeria from April through December 2015 was 22,084,647.74 Nigerian Naira, or approximately $110,950. However, he also submitted a statement of foreign payroll payments from indicating that in addition to receiving a salary, he was compensated with other allowances and incentives. While his total earnings in 2014 and 2015 according to were $284,483.30 and $114,481.17, respectively, his base salary was $138,248.70 and $41,768.09. Regarding 2015, he indicated on his curriculum vitae that he worked for in Texas from July 2014 to May 2015 and then in Nigeria from May 2015 to present (2016). The figures in the letter do not coincide with the statement. Moreover, the record does not specify if his foreign earnings are included in the numbers reported in the Form W-2s, or if the numbers reported on the Form W-2s are based on a salary or a combination of salary and other compensation or remuneration, such as bonuses, stock options, and living allowances.

In his affidavit submitted at the initial filing of the petition, the Petitioner stated that he earned $284,483 in 2014, which corresponds with the figures reported on his statement. However, as discussed above, that figure is his total earnings that include other compensation; his base salary was reported as $138,248.70, but his Form W-2 and supplement reflect $205,743.96. As it pertains to 2015, the Petitioner claimed that he earned $114,481.17 for his work from January to April in Texas, and then paid an equivalent of $124,980.91 from May through December for his work in Nigeria for a total of $239,162.08. Again, his statement reflects a base salary of $41,768.09, and the record does not specify if the numbers reported on his 2014 and 2015 Form W-2s are based entirely on a salary or a combination of salary and other compensation.

Moreover, as evidence that he commands a high salary compared to others in his field, the Petitioner presented documents from the U.S. Bureau of Labor Statistics, PayScale, and Glassdoor. The documentation, however, relates to the average salaries of petroleum engineers. As discussed, the Petitioner was employed in 2014 and 2015 in a managerial capacity and received wages based on such a position. Thus, the Petitioner must demonstrate that he earned a high salary or significantly high remuneration for services in relation to other managers of petroleum engineers. *See Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994) (considering a professional golfer's earnings versus other PGA Tour golfers); *see also Grimson v. INS*, 934 F. Supp. 965, 968 (N.D. Ill. 1996) (considering NHL enforcer's salary versus other NHL enforcers); *Muni v. INS*, 891 F. Supp. 440, 444-45 (N. D. Ill. 1995) (comparing salary of NHL defensive player to salary of other NHL defensemen).

The record does contain a document from indicating that annual salaries for managers of reservoir and petroleum engineers average $123,000 per year.

However, as discussed above, the Petitioner did not establish his actual salaries for 2014 and 2015 in order to compare his wages to those of other managers. Furthermore, he did not demonstrate that his other compensation, such as allowances and bonuses, constitute significantly high remuneration as compared to other managers in petroleum engineering. For these reasons, he has not shown that he has received a high salary or other significantly high remuneration for services in relation to others in the field.

B. Summary

While the evidence demonstrates that the Petitioner is a valued employee at he has not submitted the required initial evidence of either a one-time achievement or documents that meet at least three of the criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

Had the Petitioner satisfied at least three evidentiary categories, the next step would be a final merits determination that considers all of the evidence in the context of whether it demonstrates that the individual "has sustained national or international acclaim" such that he is one of that small percentage who have risen to the very top of the field of endeavor, and that his achievements "have been recognized in the field of expertise." 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20. Although we need not provide the type of final merits determination referenced in *Kazarian*, a review of the record in the aggregate supports a finding that the Petitioner has not established the level of expertise required for the classification sought.

III. CONCLUSION

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 P-D-*, ID# 353732 (AAO May 16, 2017)