U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF T-W-G- LLC

DATE: MAY 19, 2017

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a venture capitalist firm, 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 Petitioner did not meet any initial evidence criteria, when satisfying at least three is required. On appeal, the Petitioner submitted a brief arguing that the record includes evidence meeting five criteria.

Upon *de novo* review, we identified issues that the Director did not raise, relating to the Petitioner's legal existence at the time it filed the petition, the credibility of its claims regarding the Beneficiary's proposed work duties, and documentation supporting his proposed salary. We therefore issued a notice of intent to dismiss (NOID) the appeal to provide the Petitioner an opportunity to address these concerns. The Petitioner, however, has not responded to our NOID. For the reasons discussed below, 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, and who seeks to enter the United States to continue work in the area of extraordinary ability. According to the regulations, such an individual "may be authorized to come to the United States to perform services relating to an event or events if petitioned for by an employer." 8 C.F.R. § 214.2(o)(1)(i). A petitioner must provide, among other things, an explanation of the nature and dates of the events or activities in which the beneficiary will work. 8 C.F.R. § 214.2(o)(2)(ii)(C). A petition may only be filed by a United States employer, a United States agent, or a foreign employer through a United States agent. 8 C.F.R. § 214.2(o)(2)(i).

Extraordinary ability in 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." 8 C.F.R. § 214.2(o)(3)(ii). The regulations set forth a multi-part analysis for determining whether a beneficiary possesses such ability. 8 C.F.R. § 214.2(o)(3)(iii). The first step is determining whether a petitioner has provided sufficient initial evidence. This requirement can be satisfied with proof that the beneficiary has received 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 meet at least three of the eight initial evidence criteria listed at 8 C.F.R. § 214.2(o)(3)(iii)(B)(*1*)-(*8*).

The submission of documents relating to at least three initial evidence criteria does not, however, in and of itself, establish eligibility for O-1 classification. *See* 59 Fed. Reg. 41818, 41820 (Aug. 15, 1994). 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). 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 initial evidence under at least three criteria, we will then 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

A. Valid United States Employer

As noted above, an O-1 petition may only be filed by a United States employer, a United States agent, or a foreign employer through a United States agent. 8 C.F.R. § 214.2(o)(2)(i). The Petitioner does not claim to be an agent, and must therefore be a legal United States employer. We raised this issue in the NOID, noting that publicly available documents show that the Petitioner was not a legal entity at the time it filed the instant petition on June 1, 2015. The website of the Georgia Secretary of State, Corporations Division, shows that an entity with the Petitioner's name was registered in 2006, but that company was administratively dissolved in 2008.[1] The website reveals a currently active business with the Petitioner's name, however, this entity was registered on October 20, 2015, several months after the filing of this petition.

The Petitioner has not responded to the NOID. As a result, the record does not support a finding that, at the time of filing, the Petitioner was a legal entity or a valid United States employer eligible to seek O-1 classification for the Beneficiary. 8 C.F.R. § 214.2(o)(2)(i). The Petitioner must satisfy all eligibility requirements for the immigration benefit from the time of filing. 8 C.F.R. § 103.2(b)(1). Here, it has not made such a showing.

[1] *See* Business Search, State of Georgia Secretary of State website, https://ecorp.sos.ga.gov/BusinessSearch (last visited Apr. 4, 2017 and incorporated into the record of proceedings).

B. Work in the Area of Extraordinary Ability

A petitioner must demonstrate that a beneficiary seeks to enter the United States to continue work in the area of extraordinary ability. The record should contain an explanation of the events or activities in which the beneficiary will work. 8 C.F.R. § 214.2(o)(2)(ii)(C). In this case, the Petitioner has submitted a proposed itinerary for the Beneficiary indicating that he will provide consulting services related to oil and gas recovery processes to three of the Petitioner's clients: , , and .

We noted in the NOID that the record does not support the Petitioner's claimed relationships with these entities or its involvement in the business of providing consulting services for oil and gas recovery. The Petitioner has not verified the existence of a that operates in the oil and gas recovery business.[2] On its website, describes itself as "the oldest and largest company in the nation."[3] states that it is "a leading provider of innovative software focused on helping our customers improve financial performance, increase operating efficiencies and maintain regulatory compliance."[4] The Petitioner has not refuted these statements or otherwise explained why these companies would hire the Petitioner to provide consulting services related to oil and gas recovery. Without an explanation and additional corroboration, the Beneficiary's proposed work lacks credibility. As a result, the evidence does not satisfy 8 C.F.R. § 214.2(o)(2)(ii)(C).

C. Extraordinary Ability

The Petitioner seeks to employ the Beneficiary as an "international electrical engineer" for three years. It does not claim that the Beneficiary has received a major, internationally recognized award, and instead maintains that he meets five of the alternative initial evidentiary criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B)(*1*)-(*8*). On appeal, the Petitioner mentions previously submitted evidence in support of each criterion. For the reasons discussed below, we find that the material meets only one criterion, when documents satisfying at least three are required.

> *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 noted that the Beneficiary has received six training certifications, but found the record did not show that these were nationally or internationally recognized prizes or awards. On appeal,

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[2] In the NOID, we noted the existence of the widely known a multi-billion dollar oil company. *See* 2012) http:// (last visited Apr. 3, 2017 and incorporated into the record of proceedings) (discussing the purchase of for $5.3 billion).

[3] http:// (last visited Apr. 4, 2017 and incorporated into the record of proceedings).

[4] About Us, http:// (last visited Apr. 3, 2017 and incorporated into the record of proceedings).

the Petitioner emphasizes the Beneficiary's receipt of the and Certified Scrum Master certificates in particular. The Petitioner provides a printout from the website indicating that it is "a de facto process-based method for effective project management." An explanation of the Certified Scrum Master certificate states that a scrum master "helps project teams properly use Scrum [and] increas[es] the likelihood of the project's overall success." These materials show that such trainings are potentially useful in the workplace. Importantly, however, the Petitioner does not address the deficiency identified by the Director, namely, that the training certificates are not nationally or internationally recognized prizes or awards.

Although not raised on appeal, the record also contains a letter from of an associate of the Beneficiary. indicated: "We . . . recognize [the Beneficiary] as 2014 in the category of ' ' Despite this declaration, the Petitioner has not submitted corroborating material to show the Beneficiary's receipt of this honor. For purposes of this criterion, it also has not shown that the award is nationally or internationally recognized or that it was received for excellence in the field of endeavor. For these reasons, the Petitioner has not satisfied 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 Petitioner asserts that evidence of the Beneficiary's membership in the satisfies this criterion. It provides information regarding the qualifications for membership in the an individual must work in the petroleum industry and have 1) a two-year science or engineering degree, 2) a four-year university degree in any field, or 3) six years of experience related to the engineering or science in the petroleum industry. On appeal, it emphasizes the Professional Code of Conduct, which indicates that ' Professionals are to exhibit the highest standards of competency, honesty, integrity and impartiality . . . ." However, neither the membership qualifications nor the Code of Conduct satisfies this criterion. The Petitioner has not established that education and experience, without more, constitute outstanding achievements. Furthermore, the information provided does not include any necessary credentials for those assessing prospective members. In other words, the Petitioner has not demonstrated that membership determinations are made by recognized national or international experts. For these reasons, the Petitioner has not satisfied 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 Petitioner provided evidence that he served as a referee for application as a corporate member of We find that this satisfies the requirements of 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 Petitioner indicates that the Beneficiary was employed in a critical capacity for a subsidiary of It provides a letter from the company's geosciences general manager. indicates that the Beneficiary was a project interface manager and a team head for subsea development projects, specifically, the According to the Beneficiary's efforts contributed to the successful completion of the project, which resulted in an additional 486 million barrels (MMBBL) of oil reserves, an additional 100 thousand barrels of oil equivalents (MBOE) of gas reserves, and a net profit of about $1 billion. Engineering Division Manager for Development Projects, was similarly complimentary of the Beneficiary's impact: "His efforts definitely contributed to the successful completion of major development projects that have contributed to oil & gas production increase for the company. He played a critical role within the successful completion of the projects which can be definitely accredited to his efforts."

Although these letters confirm the Beneficiary's work for the company, they do not provide details regarding his role in the stated project or the company at large. Positive contributions, without additional corroboration, are not sufficient to demonstrate that the Beneficiary was employed in a critical or essential capacity. states that the Beneficiary played a critical role in projects, but does not provide the rationale for this conclusion or specifically explain what he did that was critical or essential. Moreover, the regulation requires that the Beneficiary be employed in such a capacity for the organization as a whole. While mentions the Beneficiary's work on a specific project, he does not discuss the significance of the Beneficiary's work within the company at large. For example, although the letter notes the additional output created by the project, it does not otherwise discuss the significance of this increase for the organization.

Lastly, the Petitioner submits blog posts from that indicate planned to increase spending and was looking to expand: "The company intends to invest approximately $1.2 billion next year in Indonesia, up from the targeted $400 million for this year." Although the Petitioner states that this was due to the Beneficiary's role, the record includes insufficient evidence to support this claim. As a result, these blog posts, along with other submitted documents, do not demonstrate that the Beneficiary has been employed in a critical or essential capacity for the organization.

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).

In support of this criterion, the Petitioner indicates that the Beneficiary's proposed salary is $200,000 per year. However, as we indicated in the NOID, the Petitioner did not disclose its gross or net income in the petition, instead listing "N/A." Without information regarding the company's

financial situation, the Petitioner has not demonstrated that the Beneficiary's proposed salary and compensation are credible.

In addition, the only evidence regarding the Beneficiary's past salary is a letter of promotion from [redacted] indicating that he received a promotion effective June 1, 2011 with an annual salary of 797,364 Nigerian Naira. Historical conversion rates for that period show that this was the equivalent of approximately $5,105.58 per year.[5] The Petitioner has not offered evidence verifying that this amount constitutes a high salary or remuneration. As a result, it has not provided sufficient documentation that meets this criterion.

III. CONCLUSION

The Petitioner has not demonstrated that it was a valid United States employer at the time it filed the petition, provided a credible description of the Beneficiary's proposed work, or shown that the Beneficiary possesses extraordinary ability. As a result, it has not satisfied the requirements for the extraordinary ability nonimmigrant classification.

ORDER: The appeal is dismissed.

Cite as *Matter of T-W-G- LLC*, ID# 72668 (AAO May 19, 2017)

[5] This conversion is based on the June 1, 2011conversion rate of 0.0064030734 Nigerian Naira per 1 U.S. dollar. Current and Historical Rate Tables, XE (June 1, 2011), http://www.xe.com/currencytables/?from=NGN&date=2011-06-01. This rate is used merely as a basis for comparison.