U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32024996

Date: OCT. 09, 2024

Appeal of Vermont Service Center Decision

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

The Petitioner, an investment and advisory firm, seeks to classify the Beneficiary, an external managers evaluation specialist, as an individual of extraordinary ability. This O-1 nonimmigrant visa classification is available to individuals 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 on the following two grounds: 1) the Petitioner did not satisfy the advisory opinion requirement, and 2) the Petitioner did not show that the Beneficiary received a major, internationally recognized award, or at least three of eight possible forms of documentation. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

As relevant here, section 214(c)(6)(A)(i) of the Act requires the petitioner to submit an advisory opinion from a peer group or a labor organization. *See also* 8 C.F.R. § 214.2(o)(2)(ii)(D) and 214.2(o)(5). If the petitioner establishes that an appropriate peer group, including a labor organization, does not exist, then a petition may be adjudicated without the advisory opinion. *See* Section 214(c)(6)(C) of the Act and 8 C.F.R. § 214.2(o)(5)(i)(G).

As it relates to a beneficiary, 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

A. Consultation

The first issue is whether the petitioner has submitted the required written advisory opinion from an appropriate consulting entity, pursuant to 8 C.F.R. § 214.2(o)(2)(ii)(D). If the petitioner establishes that an appropriate peer group, including a labor organization, does not exist, UCSIS will render a decision on the evidence of record. See 8 C.F.R. § 214.2(o)(5)(i)(G). The Director determined that the Petitioner did not establish that there is no appropriate peer group with expertise in the Beneficiary's field. On the O and P Classification Supplement that accompanied the Form I-129, the Petitioner indicated that an appropriate labor organization does not exist for the petition. In response to the questions "[i]s the required consultation or written advisory opinion being submitted with this petition?" and "Name of Recognized Peer/Peer Group or Labor Organization" the Petitioner indicated "N/A."

The Director issued a request for evidence (RFE), in which the Director advised the Petitioner of the requirement to submit a consultation from a peer group. In response, the Petitioner asserted that "[g]iven that there is no peer group, including a labor organization that exists in the field of Event-Driven Investing, in lieu of same, we have submitted advisory opinions from experts in the field, who have described [the Beneficiary's] extraordinary ability/achievements and duties performed in accordance with 8 C.F.R. § 214.2(o)(5)(i)(C)." The Petitioner did not indicate which specific letter or letters were being submitted to satisfy the evidentiary requirement at 8 C.F.R. § 214.2(o)(ii)(2).

The regulation at 8 C.F.R. § 214.2(o)(5)(ii)(A) provides that the required consultation may be provided by "a person or persons with expertise in the area of the aliens ability." The regulation states that "if the advisory opinion is favorable to the petitioner, it should describe the alien's ability and achievements in the field of endeavor, describe the nature of the duties to be performed, and state

[1] *See also 2 USCIS Policy Manual*, M.4(C)(4), https://www.uscis.gov/policymanual.

whether the position requires the services of an alien of extraordinary ability." *Id.* While the submitted reference letters are highly complimentary to the Beneficiary, and mention some of his specific achievements in his field, none of the letters describe the nature of the duties to be performed or state whether the position requires the services of an individual of extraordinary ability. Such content is specifically required by 8 C.F.R. § 214.2(o)(5)(ii)(A).

On appeal, the Petitioner submits a letter from its representative who it claims, "offers a written advisory opinion in support of [the Beneficiary], discussing his ability and achievements in the field, describing the nature of the duties to be performed, and stating whether the position requires the services of an individual of extraordinary ability period." We will not consider this evidence as it was not presented before the Director. *See Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988) (providing that if "the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the denial, we will not consider evidence submitted on appeal for any purpose" and that "we will adjudicate the appeal based on the record of proceeding" before the Director); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). Based on the foregoing, we conclude that the Petitioner has not submitted the required written advisory opinion from an appropriate consulting entity.

B. Extraordinary Ability in Business

The next issue to be addressed is whether the Petitioner offered evidence to establish that the Beneficiary satisfies the evidentiary criterion at 8 C.F.R. § 214.2(o)(3)(iii)(A) or at least three of the eight categories listed at 8 C.F.R. § 214.2(o)(3)(iii)(B)(*1*)-(*8*). As the Petitioner did not indicate or establish the Beneficiary has received a major, internationally recognized award, it must demonstrate the Beneficiary satisfies at least three of the alternate regulatory criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B)(*1*)-(*8*). The Director determined the Beneficiary fulfilled only two criteria, scholarly articles under 8 C.F.R. § 214.2(o)(3)(B)(iii)(*6*) and employment in a critical or essential capacity under 8 C.F.R. § 214.2(o)(3)(iii)(B)(*7*). On appeal, the Petitioner maintains the Beneficiary meets three additional categories.[2]

> *Published material in professional or major trade publications or other 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 Petitioner claims the Beneficiary's eligibility for this criterion because "deals [the Beneficiary] worked on" and his contributions of "specific ideas and strategies to key projects" were "discussed in major media." It provided articles from rbc.ru, reuters.com, gipp.ru, interfax.com, kommersant.ru, breakingviews.com, ft.com, capacitymedia.com, jp.reuters.com, bloomberg.com, vedomosti.ru, cnews.ru, and cableman.ru.

On appeal, the Petitioner highlights three translated articles that it contends discussed the Beneficiary's work contributions, specifically, of a proposed a special dividend to increase the attractiveness of a

[2] We consider any previous eligibility claims not raised on appeal to be waived. *See, e.g., Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (*citing Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012)).

difficult initial price offering of shares in the mobile operator [redacted] (reuters.com)); and his proposed varied debt restructuring mechanisms in response to client [redacted] inability to service its $220 million debt [redacted] (interfax.com) and [redacted] (gipp.ru)).[3] In order to fulfill this criterion, the Petitioner must demonstrate published material about the Beneficiary in professional or major trade publications or other major media, as well as the title, date, and author of the material.[4]

As noted by the Director, however, none of the articles mention the Beneficiary, and therefore, they do not show published material about him relating to his work. In addition, the Petitioner provides online translations of the majority of the above articles originally in the Russian language. Any document prepared in a foreign language must be accompanied by a full English language translation. 8 C.F.R. § 103.2(b)(3). The translator must certify that the English language translation is complete and accurate, and that the translator is competent to translate from the foreign language into English. *Id*. Because the Petitioner did not submit a properly certified English language translation of many of the articles, we cannot meaningfully determine whether the translated material is accurate and thus supports the Petitioner's claims. Further, much of the material does not contain the required dates and authors of the material. Because the Petitioner did not show the articles qualify as published material about the Beneficiary and include the required dates and authors, we need not make a determination relating to the standings of the websites.[5]

Finally, on appeal the Petitioner requests that "articles and corroborating expert letters be considered as comparable evidence, as it has been established that individual employees in the field of investment banking are typically not identified in news media."[6] Because the Petitioner did not claim eligibility for comparable evidence at initial filing or in response to the Director's RFE, we will not consider this basis as it was not presented before the Director. *See Soriano*, 19 I&N Dec. at 766; *see also Obaigbena*, 19 I&N Dec at 533.

Accordingly, the Petitioner did not show that the Beneficiary fulfills 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*).

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[3] We note that the online translation of the article from gipp.ru includes that the article's source is the webpage gazeta.ru, about which information was not provided.

[4] *See also* 2 *USCIS Policy Manual*, *supra*, at M.4(C)(2).

[5] *See* 2 *USCIS Policy Manual*, *supra*, at M.4(C)(2) (reflecting that in evaluating whether a submitted publication is a professional publication, major trade publication, or major media, relevant factors include the intended audience (for professional and major trade publications) and the relative circulation, readership, or viewership (for major trade publications and other major media).

[6] The regulation at 8 C.F.R. § 214.2(o)(3)(iii)(C) provides that if the criteria do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence in order to establish the beneficiary's eligibility. *See generally* 2 *USCIS Policy Manual*, *supra*, at M.4(C)(3) (instructing that a general unsupported assertion that the listed criterion does not readily apply to the beneficiary's occupation is not probative, and officers do not consider comparable evidence if the petitioner submits evidence in lieu of a particular criterion that is readily applicable to the beneficiary's occupation simply because the beneficiary cannot satisfy the criterion).

Analysis under this criterion focuses on whether the beneficiary's original work constitutes major, significant contributions in the field.[7] The Petitioner asserts the submission of testimonial letters established the Beneficiary's contributions of major significance. In its initial submission it argued he "has participated in $20 billion worth of transactions throughout his career," and "has a record of innovative solutions to challenging deals and prescient forecasting, which has resulted in salvaged deals, recouped funds, and ultimately strong relationships with major clients that continue to benefit [the Beneficiary's] employers." On appeal, it references recommendations letters it submitted from five of the Beneficiary's colleagues.[8]

Although the letters highly praise the Beneficiary for his work for various companies, they do not identify the Beneficiary's contributions and explain how they have been majorly significant in the field. Instead, the letters make broad claims regarding his work in his positions with [redacted] on behalf of its client companies. For instance, "in 2009 [the Beneficiary] and I worked together on a highly complex transaction, whereby [redacted] would acquire a 51% equity stake in [redacted] the largest diversified business media holding in Russia at that time, by injecting $80 [million] into the business . . . . contingent upon the successful restructuring of [redacted] debt" and "[the Beneficiary's] team managed to develop a restructuring mechanism that had never been used in Russia before" which "provided a powerful boost to the morale of the whole business community" (V-S-); "[the Beneficiary] advised [redacted] mobile telecom carrier in Russia - on a series of acquisition transactions" of [redacted] with the result that [redacted] ascended to number one position in all investment banking league tables," his work on the [redacted] reorganization and merger with [redacted] "was the largest contributor to [redacted] revenue in 2011," and he "advised [redacted] on $1.6 bln asset swap with [redacted] . . . [which] marked yet another step in telecom sector reform in Russia." (M-A-); the Beneficiary recouped over $35 million losses for an individual investor through "prescient" forecasting (J-G-); and the Beneficiary developed an innovative solution to the initial price offering of shares in the mobile operator [redacted] controlled by telecom firm [redacted] which allowed [redacted] to "win further mandates from this giant telecom firm" (J-H-).

As evidenced above, the letters reflect how much his employer valued the Beneficiary's contributions to its company. However, the letters do not explain what the Beneficiary has contributed in the field and how those contributions are considered to be of major significance in the field. In addition, the letters make general claims and point to the Beneficiary's impact on the individual companies rather than on the overall field.[9] Moreover, the letters do not articulate how the Beneficiary's performances in his roles at [redacted] somehow influenced or affected the field in a significantly major manner.

Detailed letters from experts in the field explaining the nature and significance of the person's contribution may also provide valuable context for evaluating the claimed original contributions of major significance, particularly when the record includes documentation corroborating the claimed

[7] *See generally* 2 *USCIS Policy Manual*, *supra*, at M.4(C)(2).

[8] While we discuss a sampling of letters, we have reviewed and considered each one.

[9] *Cf., Visinscaia v. Beers*, 4 F. Supp. 3d 126, 134-35 (D.D.C. 2013) (upholding a finding that a ballroom dancer had not met a similar criterion in the immigrant classification for individuals of extraordinary ability under 8 C.F.R. § 204.5(h)(3)(v) because she did not corroborate her impact in the field as a whole).

significance.[10] Submitted letters should specifically describe the person's contribution and its significance to the field and should also set forth the basis of the writer's knowledge and expertise.[11] In this case, the letters lack specific, detailed information explaining how the Beneficiary has made original contributions of major significance. 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 the reasons discussed above, the Petitioner has not shown the Beneficiary has made original contributions of major significance in the field.

> *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*).

If the petitioner is claiming to meet this criterion, then the burden is on the petitioner to provide appropriate evidence establishing that the beneficiary's compensation is high relative to others working in similar occupations in the field.[12] The Petitioner states that the Beneficiary qualifies for this criterion based on the pay he received with [redacted] Russia between 2009 and 2016. The Director found insufficient evidence to establish that the Beneficiary earned a high salary or other remuneration.

The Petitioner initially provided the Beneficiary's employee compensation statements from [redacted] from 2009 through 2015, reflecting his annual compensation package, which includes his base salary and incentive bonuses. The Petitioner's response to the Director's RFE included the Beneficiary's Russian tax returns for the years 2011 through 2016. This documentation shows that in 2016, his total compensation was 11,034,837 RUB, including his base salary of 8,717,074 RUB. The record further reflects he received total compensation of 17,667,291 RUB in 2015; 14,571,014 RUB in 2014; 11,159,611 RUB in 2013; 10,020,865 RUB in 2012; and 9,448,750 RUB in 2011. The Petitioner argues that the Beneficiary's past salaries are evidence he is "one of the few who have risen to the very top of the field of Event-Driven Investing. . . ."

The Petitioner submitted a screenshot from glassdoor.com for banking analysts in [redacted] showing a "total pay range" in 2023 of 417K RUB to 5M RUB monthly, which did not demonstrate the Beneficiary's past compensation, discussed above, constituted a high salary or other remuneration in comparison.[13] Further, the screenshot does not state how many users reported their salaries to make its findings, which limits the data's evidentiary value.

Within its RFE response, the Petitioner also submitted a screen capture, which it described as Russia's Federal State Statistics Service (Rosstat) Salary Data Comparison, surveying wages for different types of workers. The Rosstat salary comparison includes the average monthly wage for "Financial Intermediation" positions and "Support Activities in the Field of Financial Intermediation" between 2012 and 2015. However, the statistics from Rosstat do not provide sufficient detail to form a useful

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[10] *See generally* 2 *USCIS Policy Manual*, *supra*, at M.4(C)(2).
[11] *Id.*
[12] *Id.*
[13] Glassdoor.com salary information is self-reported and not verified. *Cf. Badasa v. Mukasey*, 540 F.3d 909 (8th Cir. 2008) (finding that an open, user-edited internet site, *Wikipedia*, lacks reliability of the content).

basis for comparison to the Beneficiary's salary. In this case, the data from Rosstat appears to consider all workers engaged in the field of financial intermediation, regardless of education, experience, or the complexity of the duties they perform, and, therefore, the Petitioner has not shown that such data is an adequate basis of comparison to the Beneficiary's position in those years as an investment banking vice president. Further, the monthly figure provided is an average. Although the Beneficiary's compensation in those years was above the average figure provided, the data is not sufficient to establish that it can be considered to be high when compared to top earners in similar positions. Finally, this is a national figure, and therefore does not consider the inevitable differences in compensation based upon location, especially in a large territory such as the Russian Federation. For all of these reasons, the Petitioner has not established that the Beneficiary has commanded a high salary or other remuneration based on the Rosstat statistics.

Moreover, the Petitioner's RFE response provided letters from two Russian financial industry recruiters who state, respectively, that the Beneficiary's total annual compensation at [redacted] between 2009-2016 was "above industry average by approximately 20 to 30%" (E-C-) and "15-30% above industry average, depending on the year" (O-F-). However, E-C- and O-F- did not support their statements with any corroborating reports. As a matter of discretion, we may use opinion statements submitted by the Petitioner as advisory. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, we will reject an opinion or give it less weight if it is not in accord with other information in the record or if it is in any way questionable. *Id.* We are ultimately responsible for making the final determination regarding a beneficiary's eligibility for the benefit sought; the submission of expert opinion letters is not presumptive evidence of eligibility. *Id.*[14]

Finally, we acknowledge the Petitioner's submission of U.S. salary data from investopedia.com, wallstreetprep.com, and finexecutive.com (quoting wallstreetprep.com as its source) for the positions of investment banker, investment banking analyst, and direct investment fund analyst/associate, as well as currency conversion charts; however, we evaluate persons working outside the United States based on the wage statistics or comparable evidence relevant to their work location, rather than by simply converting the salary to U.S. dollars and then viewing whether that salary would be considered high in the United States.[15] The Petitioner has not claimed that the Beneficiary has commanded a high salary for a U.S.-based position and therefore that data is not relevant to our evaluation of this criterion.

Accordingly, the Petitioner did not demonstrate the Beneficiary meets this criterion.

The Petitioner did not show the Beneficiary meets three categories of evidence. As such, we need not provide a totality determination to establish whether the Beneficiary has sustained national or international acclaim and is one of the small percentage who has arisen to the very top of the field. *See* section 101(a)(15)(O)(i) of the Act and 8 C.F.R. § 214.2(o)(3)(ii) and (iii).[16] Accordingly, we reserve this issue.[17]

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[14] Although the Petitioner submits additional testimonial letters from O-F and E-C- on appeal, we will not consider this evidence as it was not presented before the Director. *See Soriano*, 19 I&N Dec. at 766; *see also Obaigbena*, 19 I&N Dec at 533.

[15] *See generally* 2 *USCIS Policy Manual*, *supra*, at M.4(C)(2).

[16] *See also* 2 *USCIS Policy Manual*, *supra*, at M.4(B).

[17] *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that agencies are not required to make "purely advisory

III. CONCLUSION

The Petitioner has not submitted qualifying evidence under 8 C.F.R. § 214.2(o)(3)(iii)(A) or at least three criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B). Furthermore, the Petitioner has not provided the required written advisory opinion from an appropriate consulting entity as required under 8 C.F.R. § 214.2(o)(5)(ii)(A). 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.

findings" on issues that are unnecessary to the ultimate decision); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where applicants do not otherwise meet their burden of proof).