U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF P-B-N-

DATE: NOV. 8, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a software engineer, seeks classification as an individual of extraordinary ability. *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 Nebraska Service Center denied the Form I-140, Immigrant Petition for Alien Worker, concluding that the Petitioner had met three of the ten initial evidentiary criteria, as required, but that he did not establish eligibility in the final merits analysis.

On appeal, the Petitioner cites the evidence submitted previously and contends that the totality of the circumstances demonstrate that he qualifies as an individual of extraordinary ability.

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

I. LAW

Section 203(b)(1)(A) of the Act makes visas available to immigrants with extraordinary ability 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 two options for satisfying this classification's initial evidence requirements. First, a petitioner can demonstrate a one-time achievement (that is a major, internationally recognized award). Alternatively, he or she must provide documentation that meets at least three of the ten categories of evidence listed at 8 C.F.R. § 204.5(h)(3)(i)-(x) (including items such as awards, memberships, and published material in certain media).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether 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. *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 fulfilling the required number of criteria, 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). This two-step analysis is consistent with our holding that the "truth is to be determined not by the quantity of evidence alone but by its quality," as well as the principle that we 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." *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

II. ANALYSIS

The Petitioner is a software engineer. The record reflects that he has been employed in that position for from 2011 to 2014 and as a senior software engineer from 2014 through 2015. He currently works as a software engineer for As the record has not 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).

A. Evidentiary Criteria

The Director found that the Petitioner met the following criteria: judging at 8 C.F.R. § 204.5(h)(3)(iv), authorship of scholarly articles at 8 C.F.R. § 204.5(h)(3)(vi), and high salary at 8 C.F.R. § 204.5(h)(3)(ix). Because he met three of the initial requirements, the Director considered the evidence in the record regarding a final merits determination and concluded that the record did not establish that the Petitioner had the sustained national or international acclaim in the field required for this classification.

We find that the evidence in the record sufficiently demonstrates that the Petitioner meets the initial requirements for judging based on his role as a judge for the in 2015 and his review of two scholarly papers for the 2011 The record reflects that he meets the requirements for scholarly articles based on the article he co-authored entitled, published by the in 2010. And he meets the requirements for high salary based upon the

evidence of his salary in 2016 and 2017 in relation to others in the field. Therefore, he meets three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3), and we will evaluate the totality of the evidence in the context of the final merits determination below.[1]

B. Final Merits Determination

As the record satisfies at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), we will analyze the Petitioner's accomplishments and weigh the totality of the evidence to determine if his successes are sufficient to demonstrate that he has extraordinary ability in the field of endeavor. We evaluate whether he has demonstrated, by a preponderance of the evidence, that he has sustained national or international acclaim and that his achievements have been recognized in the field through extensive documentation, making him one of the small percentage who have risen to the very top of the field of endeavor. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3): *see also Kazarian*, 596 F.3d at 1119-20.

On appeal, the Petitioner states that the Director did not address whether he has enjoyed sustained acclaim and had risen to the top of his field in the final merits discussion, focusing instead on the initial evidentiary requirements. While the Director did address his level of acclaim to some degree, the Petitioner correctly notes that the second step in the analysis under *Kazarian* is centered on an analysis of whether 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. *Id.* Here, he has not shown his eligibility for this classification.

With respect to awards, co-founder of states that the Petitioner and his team won the competition held in during 2016 competing with 75 participants from around the world. The Petitioner has not demonstrated he received any national or international acclaim from this event. The record contains photographs of what appears to be him and his team winning this award, but there is not any evidence indicating this was reported by any media outlets or other evidence of acclaim from winning this award.

The Petitioner, however, states that has extensive instances of press coverage. The record contains the results of a Google search for highlighting articles about it from publications such as Forbes, the Canadian Broadcasting Corporation, the Huffington Post, and BCBusiness. The fact that there are many competitions in the United States tends to reflect that these are regional competitions and the record does not demonstrate that these events have national acclaim. Therefore, this does not demonstrate national or international acclaim or that the Petitioner's achievements have been recognized in the field. *See* 8 C.F.R § 204.5(h)(3).

[1] On appeal, the Petitioner references the criteria relating to awards at 8 C.F.R. § 204.5(h)(3)(i), membership at 8 C.F.R. § 204.5(h)(3)(ii), contributions of major significance at 8 C.F.R. § 204.5(h)(3)(v), and critical role at 8 C.F.R. § 204.5(h)(3)(viii). We will consider the evidence relating to these criteria in our final merits determination as we assess whether he has sustained national or international acclaim and has risen to the very top of his field.

For membership, the Petitioner states on appeal that he was invited to serve as senior member of the [redacted] In a letter from [redacted] the [redacted] President and CEO, she congratulates him for being elevated to the grade of [redacted] which she states is held by only ten percent of the [redacted] members, "requires extensive experience, and reflects professional maturity and documented achievements of significance." The Petitioner has not demonstrated that he has received acclaim from this membership.

Regarding the Petitioner's participation as a judge of others' work, the record reflects that he conducted two peer reviews for the [redacted] in 2011 and that he served as a judge of high school students for the [redacted] in 2015. The record does not contain evidence of any press coverage of these events to demonstrate acclaim that the Petitioner may have received from this review experience.

As to his contributions in the field, the Petitioner states that he holds five patents that have greatly contributed to the commercial growth of [redacted] and [redacted] In a letter from [redacted] the Senior Director of Engineering at [redacted] he indicates that "[the Petitioner] is currently working on developing a cloud-first big-data platform for [redacted] and that he has filed three patents "as part of his research and development efforts, which is evidence of the importance and novelty of his work here at [redacted][2] The Director held that the evidence in the record demonstrates that he was a productive member of his team, but that this did not indicate his achievements had been recognized in the field of expertise under 8 C.F.R. § 204.5(h)(3). The Petitioner has not overcome this conclusion on appeal. We note that being a co-inventor for a patent is an indication of his positive contributions to the company, but the record has not established how this constitutes sustained national or international acclaim.

Similarly, [redacted] technical lead/ manager at [redacted] and former Director at [redacted] indicates that the Petitioner developed [redacted] that are currently in use on millions of Android-powered mobile devices. We recognize the widespread use of this technology and his role in developing it, but the record does not provide evidence of the acclaim he has received from this. Therefore, the record does not establish that his contributions in the field have led to sustained national or international acclaim.

As to scholarly articles, the Petitioner states that he has published numerous articles in major peer-reviewed journals and conferences. The Director noted that he submitted one paper that the [redacted] published in 2010 and other papers that do not appear to be published. The Petitioner has not provided additional evidence to demonstrate whether these other papers have been published. [redacted] Associate Professor at [redacted], indicates that the Petitioner's

[2] The record contains evidence demonstrating the Petitioner is listed as a co-inventor for three patent publications with [redacted] as the assignee. He states that he holds five patents whereas [redacted] states that he has filed three patents with [redacted] The record contains evidence that he has filed three patent applications as a co-inventor for [redacted] one of which has been published. The record does not contain evidence of the patent applications with [redacted]. The Petitioner should resolve these inconsistencies in any further filings.

article in 2010 was based on a cognitive-radio testbed that he developed which He refers to this as a "novelty in the testbed architecture" and indicates that the Petitioner presented on this at the 2010 conference. The record shows that his article was listed among 97 publications. The Petitioner has not shown that he received acclaim from this event. We also note that the record demonstrates this article has been cited in five papers, but he has not established that this demonstrates sustained national or international acclaim. 8 C.F.R. § 204.5(h)(3).

With respect to a leading or critical role, the Petitioner states that he has served in a critical role for and and that his role for these companies has impacted various industries in the United States. As stated above, the roles he played in these companies are noteworthy, but the record does not contain evidence that his influence has been significantly noted in the field. Director of Product Management, states that he has been vital to the company's development of the Internet of Things (IOT) analytics. He claims that the Petitioner's edge analytics "has tremendous business potential." asserts that "[h]is past experience, coupled with his experience at in developing search engine and analytics infrastructure, places him in a unique position in the IOT team, which requires multidisciplinary effort for the successful execution of the project." This shows the Petitioner's positive influence within Splunk but does not demonstrate his national or international acclaim in the field.

In addition, states that at the Petitioner "designed and developed the software stack to analyze wireless data packets from scratch," noting that "[t]his novel approach enabled him to integrate the stack on multiple platforms including Apple MAC, Microsoft windows, and Linux operating systems without customization." He states that he "effectively collaborated with various teams for timely release of the software," which was "crucial for developing and debugging of the new WiFi architecture." This also demonstrates the role the Petitioner played in the development of products, but the record does not establish that this led to national or international acclaim to himself individually.

The record reflects that the Petitioner has a high salary in relation to others in his field. However, the evidence in the record does not demonstrate that he has received national or international acclaim on account of his salary.

The Petitioner claims that he enjoys high levels of success and recognition from other experts in the field. We note that the letters in the record highlight his expertise and accomplishments, rather than his acclaim within the field. Furthermore, as they come from individuals who are personally familiar with him they may not be indicative of his broader recognition within the field. For example, states that he was the Petitioner's mentor during his graduate research at the The other letters in the record are from individuals in senior positions at and where he worked.

The Petitioner states that he has been a conference speaker and panelist at nationally and internationally recognized conferences, including the

[redacted] Conference, and the [redacted] Conference. The record contains a printout of the event registration page listing the speakers for the [redacted] Conference for 2017 and a schedule of events at the [redacted] conference, but the Petitioner has not demonstrated how receiving an invitation to speak at these conferences is an indication of national or international acclaim. Moreover, it is unclear how much recognition he received from presenting at these conferences, as well as the [redacted] Conference. The record does not contain press coverage about these events or otherwise demonstrate the number of attendees and how these show the Petitioner's acclaim in the field.

Therefore, we find that the record has not sufficiently demonstrated that the Petitioner has sustained national or international acclaim and is among the small percentage at the top of his field. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2)-(3).

III. CONCLUSION

For the reasons discussed above, the Petitioner has not established eligibility as an individual of extraordinary ability under section 203(b)(1)(A) of the Act.

ORDER: The appeal is dismissed.

Cite as *Matter of P-B-N-*, ID# 1685645 (AAO Nov. 8, 2018)