



U.S. Citizenship
and Immigration
Services

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 8865930

Date: AUG. 25, 2020

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Extraordinary Ability)

The Petitioner, a business executive specializing in education, seeks classification as an alien 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 petition, concluding that the record did not establish that the Petitioner had a one-time achievement (that is, a major, internationally recognized award) or satisfied at least three of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x).

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. See Section 291 of the Act, 8 U.S.C. § 1361. Upon de novo review, we will dismiss the appeal.

I. LAW

Section 203(b)(1) 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 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 sufficient qualifying documentation that meets at least three of the ten 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).

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).

II. ANALYSIS

The Petitioner is the founder and a of shareholder of [REDACTED] [REDACTED] and the president of [REDACTED] [REDACTED]. He earned a Master of Business Administration degree from the [REDACTED] International Business School in 2013.

A. Evidentiary Criteria

Because the Petitioner 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). The Director found that the Petitioner did not meet any of the evidentiary criteria. On appeal, the Petitioner asserts that he meets four of the evidentiary criteria, relating to material published about him and his work, his original business contributions of major significance, his leading role for [REDACTED] and its related companies, and his high salary in comparison to other education executives in China. After reviewing all of the evidence in the record, we find that he does not meet the initial evidence requirement by meeting at least three of these criteria.

Published material about the alien in professional or major trade publications or other major media, relating to the alien’s work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation. 8 C.F.R. § 204.5(h)(3)(iii)

In his decision, the Director found that while several print and online articles about the Petitioner and his work in the field had been submitted, the evidence did not establish that any of them were published in one of the qualifying types of media specified under this criterion. On appeal, the Petitioner refers to previously-submitted evidence about these periodicals, *China Profiles*, *Beijing Morning Post* and *Beijing Evening News*, noting that “not all the initially submitted articles are published on so-called web portals” as discussed in the Director’s decision. Although he lists the articles posted on www.tencent.com and www.sina.com on appeal, he does not challenge the Director’s finding regarding the credibility of these sources.

The evidence of an article published in *China Profiles* on [REDACTED] 2018 consists of an original of the entire issue of this magazine. After review, we agree that this article is about the Petitioner and his work as an business executive specializing in the field of education. As to whether *China Profiles*

qualifies as a major medium, the Petitioner refers to information about this magazine included in the magazine itself, as well as information from its own website. These materials indicate that the magazine is managed by the Central Committee of the Communist Youth League and published twice every month, and describe it as a “high-level, high-profile, high-standard, and high-quality journal.” However, they do not include circulation figures for the magazine, or circulation figures for other publications in China by which it can be determined through comparison that China Profiles is a major medium.¹

The Petitioner also submitted information about China Profiles published on the website www.baidu.com. However, according to materials submitted by the Petitioner, this is a user-edited online encyclopedia, similar to Wikipedia. As there are no assurances about their reliability, the content from open, user-edited Internet sites will be accorded no evidentiary weight. See *Badasa v. Mukasey*, 540 F.3d 909, 910-11 (8th Cir. 2008).

Other articles submitted are also about the Petitioner, including two which the Petitioner asserts were published in Beijing Morning Post, and another in Beijing Evening News. However, upon review of one of the articles claimed to have been published in the Beijing Morning Post, there are discrepancies regarding its content. Specifically, several passages from the China Profiles article appear in the article asserted to have been published in the [redacted] 2013 Beijing Morning Post article, despite the five-year difference in claimed publication dates between the two articles, as well as different authors and publishers. Notably, the following paragraph appears in both articles:

In the impetuous teaching and auxiliary industry, [redacted] aged 40 is like an “odddity” – when peers indulge in venture capital investment and go all out for expansion, [redacted] still remains a rare calm. However, as the bubble fades and the education industry begins to call for a return to “true nature,” people suddenly look back and find that ‘exotic’ [redacted] is moving forward earnestly.

Although the statement regarding the [redacted] being “aged 40” would have been accurate as of the date when the China Profiles article was published in 2018, it was not accurate in 2013. In addition, both articles include the following sentence: “As of last year, the number of students stabilized between 1200 and 1300 every year, accounting for about 30%-40% of the repetition market in Beijing.” As this statement refers to a stabilization in the number of students that happened in a specific year (“last year”), it could not have been accurate in both 2013 and 2018. These inconsistencies must be resolved with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Unresolved material inconsistencies may lead us to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit. *Id.*

¹ See USCIS Policy Memorandum PM 602-0005.1, Evaluation of Evidence Submitted With Certain I-140 Petitions; Revisions to the Adjudicator’s Field Manual (AFM) Chapter 22.2, AFM Update AD11-14. (Dec. 22, 2010), <https://www.uscis.gov/policymanual/HTML/PolicyManual.html>, noting that “Evidence of published material in professional or major trade publications or in other major media publications about the alien should establish that the circulation (on-line or in print) is high compared to other circulation statistics...”

In addition, the plain language of this criterion requires that evidence of published material must include the title, date and author of the material. The article claimed to have been published in Beijing Evening News does not include the name of the author. Also, the evidence of this article does not consist of either an original or a photocopy of the article as published in print, nor does it include a website address indicating that it was published on the newspaper's website. This evidence therefore does not establish that this material was published in the Beijing Evening News as claimed.

We further note that in addition to the discrepancies noted above regarding these articles, the Petitioner has not established that these publications qualify as major media. Although the Petitioner submitted webpages from www.baidu.com with information regarding both newspapers, including circulation figures, we again note that evidence from user-edited online encyclopedias such as this will not be given consideration, as there are no assurances regarding the reliability of the information posted. Additional evidence from the website of the publisher of both newspapers indicates that as of 2016, the combined circulation of all of its ten newspapers was more than two million, accounting for more than 60% of the Beijing newspaper market. However, this evidence does not include circulation data for the individual newspapers, and thus does not establish that either Beijing Morning Post or Beijing Evening News qualify as major media.

For all of the reasons given above, we find that the Petitioner has not 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 submitted a letter from the executive vice president of [redacted] which verifies that the Petitioner is a founder and chairman of the company, and lists his annual salary from 2007 through 2018. The letter indicates that his salary for the last two years was RMB 1,000,000. To show that this salary is high in comparison to others in his field, he also submitted an article posted to the website www.jiemodui.com on [redacted] 2017, which discusses "information from Mustard Pile" concerning a report titled [redacted] which is also referred to in the article as [redacted]" The article indicates that this report was released by an "education entrepreneurship talent recruitment service platform," cailu-edu.com, and a human resource consulting firm, [redacted] However, the record does not include the report, or further information about jiemodui.com, "Mustard Pile," or the two entities said to have prepared and released the report. The third-hand nature of the information presented, in addition to the lack of information about the preparers of the report or the two entities through which this information has been forwarded, severely limits the reliability and probative value of the information presented.

In addition, the figures presented do not establish that the Petitioner's salary is high in comparison to others in his field. We first note that the article indicates that they were compiled through information from "38 representative enterprises," many of which are in various stages of the start-up process, and that the data is not grouped by locality or region. This information indicates that the data may not be broad enough to provide relevant data for the entire education industry, does not provide comparable information for salaries in established businesses such as [redacted] and the [redacted] and does not

reflect local or regional differences in salary within the industry. For these reasons, it has not been shown that this article provides relevant or sufficient data for comparison to the Petitioner's salary.

Further, even if we were to consider this data both reliable and relevant, it does not demonstrate that the Petitioner's salary is high, as opposed to merely above average, in relation to others in his field and position. A graph under the heading of "General Manager" indicates that the mean salary is nearly RMB 800,000, and that those in the 75th percentile earn slightly above RMB 1 million, while the average salary is above RMB \$1.1 million. If accurate, these figures suggest that a number of similarly situated education executives earn far more than the Petitioner.

The Petitioner also asserts on appeal that since he is a "45% shareholder of his school," we should consider "undistributed profits" of roughly RMB 3.6 million as part of his remuneration. We first note that while [redacted]'s 2017 annual report shows that he contributed RMB 1 million of a total of RMB 2.2 million in capital contributions towards the company, he has not submitted evidence that he owns a similar share of the [redacted] which the evidence indicates is a separate legal entity. In addition, the Petitioner appears to base this figure on [redacted]'s balance sheet for 2017, which the record does not indicate has been audited. Further, the Petitioner has not established that he received RMB 3.6 million in 2017, or that he is entitled to receive 45% of the company's undistributed profits for the year.

For all of the reasons stated above, we find that the Petitioner does not meet this criterion.

III. CONCLUSION

As discussed above, we find that the evidence does not establish that the Petitioner satisfies the criteria relating published material about him and a high salary compared to others in his field. While the Petitioner claims eligibility under two additional criteria on appeal, those relating to contributions of major significance in his field at 8 C.F.R. 204.5(h)(3)(v) and a leading or critical role at 8 C.F.R. § 204.5(h)(3)(viii), we need not reach those additional grounds. Because the Petitioner cannot satisfy the initial evidentiary requirement by meeting at least three of the criteria under 8 C.F.R. 204.5(h)(3), we reserve those issues.² Nevertheless, we advise that we have reviewed the record in the aggregate, concluding that it does not support a finding that the Petitioner has established the acclaim and recognition required for the classification sought.

The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward the top. USCIS has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. Matter of Price, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994). Here, the Petitioner has not shown that the significance of his work is indicative of the required sustained national or international acclaim or that it is consistent with a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); see also section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate that the Petitioner has garnered

² See *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); 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 an applicant is otherwise ineligible).

national or international acclaim in the field, and that he is one of the small percentage who has risen to the very top of the field of endeavor. See section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2).

For the reasons discussed above, the Petitioner has not demonstrated his eligibility as an individual of extraordinary ability. 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.