U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 10296240

Date: JUL. 07, 2021

Appeal of Nebraska Service Center Decision

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

The Petitioner, a senior product manager in the field of cloud computing, 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 while the record established that the Petitioner met three of the evidentiary criteria, it did not demonstrate his sustained national or international acclaim or that he is one of the very few at the top of his field.

On appeal, the Petitioner submits a brief and evidence and asserts his eligibility for the classification sought.

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,
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> (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
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> (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 international 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 criteria 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) (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).

II. ANALYSIS

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 met three of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), relating to original contributions, leading or critical role, and high salary. The Director concluded that the Petitioner had not established eligibility for the criteria related to membership and to judging. On appeal, the Petitioner acknowledges the Director's conclusion that he meets the criteria related to original contributions, leading or critical role, and high salary, but also contends that he has established eligibility for the membership criterion.[1] After reviewing all of the evidence in the record, we find that the Petitioner meets the criteria related to high salary and leading or critical role. However, contrary to the Director's finding, we conclude that the Petitioner has not shown that he satisfies the criteria related to original contributions. Further, we agree with the Director's conclusion that the Petitioner does not meet the membership 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. § 204.5(h)(3)(ii)

The Petitioner claims to meet this criterion as he is a senior member of the Institute of Electrical and Electronics Engineers, Inc. (IEEE). The record contains an e-mail notification and a letter from IEEE establishing that the Petitioner is a senior member of that organization. It also includes the IEEE 2016 Annual Report and 2018 IEEE Constitution and Bylaws demonstrating that this organization is in the Petitioner's field of endeavor.

[1] The Petitioner does not contest the Director's conclusion that he has not satisfied the judging criterion. Accordingly we deem the issue waived and will not address it in our analysis.

However, the Petitioner must also show that in order to obtain senior membership, he was judged by recognized national or international experts as having attained outstanding achievements in the field of cloud computing.[2] To establish this, the Petitioner provides the IEEE senior member requirements and a document titled "IEEE Admission and Advancement Review Panel (AARP) Meeting Schedule" describing the selection process. The IEEE senior membership requirements state that a candidate for senior membership should be "an engineer, scientist, educator, technical executive originator" in the fields of engineering, computer sciences and information technology, physical sciences, biological and medical sciences, mathematics, and/or technical communications, education, management, law and policy. In addition, candidates must "have been in professional practice for at least ten years" and "have shown significant performance over a period of at least five of those years." The IEEE requirements document advises that "[m]any prospective applicants make the mistake of assuming that "significant performance" requires special awards, patents, or other extremely sophisticated technical accomplishments, but this is not the case" as "[s]ubstantial job responsibilities such as team leader, task supervisor... all are indications of significant performance." The IEEE senior membership requirements do not indicate that the IEEE requires outstanding achievements of its senior members as judged by nationally or internationally recognized experts in the field.

Similarly, the AARP meeting schedule document does not state criteria by which the AARP selects IEEE senior members. Instead, the document identifies the locations for AARP meetings, states that the meeting should be presided over by the AARP Chair and/or Vice Chair, and provides that applicants should submit their application, resume, and required reference forms at least ten days prior to the AARP meeting. The record lacks other evidence demonstrating that IEEE requires outstanding achievements of its senior members as judged by nationally or internationally recognized experts in the field. Absent materials showing this, the record is insufficient to establish that the Petitioner satisfies this criterion. Accordingly, we agree with the Director in this matter.

> *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)

As mentioned, we conclude that the record does not establish the Petitioner made original contributions of major significance in the field. The Director concluded that the Petitioner fulfilled this criterion but did not identify the original contributions made by the Petitioner or the evidence on which he relied to make this finding.

In order to satisfy the regulation at 8 C.F.R. § 204.5(h)(3)(v), a petitioner must establish that not only has he made original contributions but that they have been of major significance in the field. For example, a petitioner may show that the contributions have been widely implemented throughout the field, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance.

[2] *See* 6 *USCIS Policy Manual* F.2(B)(2), Appendix: Extraordinary Ability Petitions – First Step of Reviewing Evidence, https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-2 (indicating that the level of membership afforded to the alien must show that in order to obtain that level of membership, the alien was judged by recognized national or international experts as having attained outstanding achievements in the field for which classification is sought.)

The Petitioner asserts that his development of the software and an tool for satisfies this criterion. With respect to the software, the Petitioner provides letters, a PowerPoint presentation titled " " and press releases and news articles about the software.[3] The letters in the record demonstrate the Petitioner's involvement in the development of the software. For example, principal systems architect at asserts that the Petitioner "founded the software" at and explains how the Petitioner's work has impacted 's ability to provide services to its customers. Vice President of Products at ,[4] states that the Petitioner "has proved essential to some of the most important technological innovations our company has made including the " and explains that the technology has reduced costs for 's customers. However, does not specifically articulate how cost saving for 's customers reflects the major significance of either the Petitioner's role in the development of the technology or the technology itself in the field of cloud computing.

Thus, while and explain how the Petitioner's development of the tool has been of major significance to and to its customers, they do not specifically articulate how this development is of major significance to the field of cloud computing as a whole. Letters that specifically articulate how the alien's contributions are of major significance to the field and its impact on subsequent work add value. Letters that lack specifics do not add value and are not considered to be probative evidence that may form the basis for meeting this criterion.[5] Without detailed specific examples demonstrating how the Petitioner's contributions to the development of the are of major significance in the field, these letters are insufficient to establish that the Petitioner meets this criterion.

The PowerPoint presentation in the record, while authored by the Petitioner, describes his role in identifying potential clients for the tool and business opportunities for . Here the Petitioner does not explain or submit evidence to establish how identifying clients is an original contribution in the field of cloud computing. Finally, we note that while press releases and media indicate the importance and implementation of the tool in the Petitioner's field, they do not identify the Petitioner, attribute the software to him, or otherwise reflect the major significance of the Petitioner's role in its development.

Regarding the tool, the Petitioner submits letters of recommendation, PowerPoint presentations, technical documentation, and news articles to show that the tool has been implemented by other companies. The PowerPoint presentations authored by the Petitioner detail the step-by-step development of the tool and identify him as one of three team members responsible for the management of the product. This documentation is sufficient to establish the Petitioner's role in developing the tool and the news articles and letters of recommendation about the tool demonstrate that it constitutes an original contribution.

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[3] While we address only a sample of the letters here, we have reviewed and considered each one in the record.
[4] The record reflects that
[5] *See* 6 *USCIS Policy Manual* F.2(B)(2), Appendix: Extraordinary Ability Petitions – First Step of Reviewing Evidence, https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-2; *see also Visinscaia*, 4 F. Supp. 3d at 134-135 (upholding a finding that a ballroom dancer had not met this criterion because she did not corroborate her impact in the field as a whole).

However, the record does not demonstrate the tool's major significance in the field of cloud computing. The letters of recommendation describe its importance of the [redacted] tool to and impact on each author's employer. For example, [redacted] notes that the Petitioner "is credited for initiating and delivering a number of key strategic initiatives such as [redacted] and describes its importance to [redacted]. Similarly, [redacted] director of sales at [redacted], describes his company's selection of [redacted] tool, noting that "[redacted] solution really shines among other solutions in the industry" and that this tool is leading "to significant savings" for his organization. While this evidence demonstrates the importance of this tool to [redacted] and to [redacted] it is insufficient to show the major significance of the [redacted] tool in the field.

Regarding the news articles, they show that a law firm and a state university now utilize the [redacted] tool. However, the Petitioner does not explain or provide evidence showing how a law firm and university are representative of the field of cloud computing such that their use demonstrates its widespread use in that field. Without information showing how the [redacted] tool has widely impacted or been implemented in the field of cloud computing as a whole, these letters do not establish that the [redacted] tool is an original contribution of major significance in the field of cloud computing.[6]

For the above stated reasons, the Petitioner has not satisfied this criterion and we will withdraw the Director's finding in this matter.

> *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)

The Petitioner asserts that he meets this criterion through his development of the [redacted] tool discussed above. Here the record includes the PowerPoint presentations describing the duties he performed in so doing and the press releases and letters demonstrating that its development has been critical for [redacted] The Petitioner also submits documentation about [redacted] to establish its distinguished reputation. Accordingly we agree with the Director that the Petitioner satisfies 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 record provides an employment certification from his employer establishing his base salary and comparable salary documentation for senior product managers from Glassdoor, PayScale, and the U.S. Bureau of Labor Statistics. This evidence demonstrates that the Petitioner's base salary is high relative to that of other senior product managers. Accordingly we agree with the Director that the Petitioner meets this criterion.

For the above stated reasons, and contrary to the Director's decision, we find that the Petitioner has not submitted documents that meet at least three of the ten criteria. As a result, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. Thus, while the Petitioner asserts on appeal that the record demonstrates his sustained national or international acclaim and that he is among the small percentage at the top of his field of endeavor, we need not reach this

[6] *Id.*

issue. We will reserve it as the Petitioner cannot meet the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3).[7] 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.

III. CONCLUSION

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 national or international acclaim in the field, and 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.

[7] *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions 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).