U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 9001177

Date: JUNE 24, 2020

Appeal of Texas Service Center Decision

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

The Petitioner, a manufacturer of generic prescription drugs, seeks to classify the Beneficiary 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 Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner had satisfied at least three of ten initial evidentiary criteria, as required. The matter is now before us on appeal.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. 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)(A) of the Act makes immigrant visas available to aliens 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 a beneficiary's 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 they 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). The regulation at 8 C.F.R. § 204.5(h)(4) allows a petitioner to submit comparable material if they are able to demonstrate that the standards at 8 C.F.R. § 204.5(h)(3)(i)–(x) do not readily apply to the individual's occupation.

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 Beneficiary has worked in the human resources (HR) field since 2001, and in the pharmaceutical industry since 2012. He began serving in his current position as the Petitioner's vice president of human capital in late 2018 in O-1 nonimmigrant status.

A. Evidentiary Criteria

Because the Petitioner has not indicated or established that the Beneficiary has received a major, internationally recognized award, it must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x). The Petitioner claims that the Beneficiary meets five criteria, summarized below:

- (ii), Membership in associations that require outstanding achievements;
- (iv), Participation as a judge of the work of others;
- (v), Original contributions of major significance;
- (viii), Leading or critical role for distinguished organizations or establishments; and
- (ix), High remuneration for services.

The Petitioner also initially claimed to have submitted comparable evidence under 8 C.F.R. § 204.5(h)(4), but does not pursue this claim on appeal, and therefore we consider that issue to be abandoned.[1]

The Director found that the Petitioner had satisfied only two criteria, numbered (iv) and (viii). The Petitioner maintains that it also submitted sufficient evidence for the other three claimed criteria.

[1] *See Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012) (stating that when a filing party fails to appeal an issue addressed in an adverse decision, that issue is waived). *See also Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005), citing *United States v. Cunningham*, 161 F.3d 1343, 1344 (11th Cir. 1998); *Hristov v. Roark*, No. 09–CV–27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (plaintiff's claims were abandoned as he failed to raise them on appeal to the AAO).

After reviewing all of the evidence in the record, we find that the Petitioner has satisfied two criteria. We agree with the Director that the Petitioner has satisfied the criterion numbered (viii), but we disagree with the Director's favorable finding regarding criterion (iv) and unfavorable finding regarding criterion (ix). We discuss these findings below.

> *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 asserts that the Beneficiary satisfies this criterion because he holds the highest level of membership (chartered fellowship) of the Chartered Institute of Personnel and Development (CIPD). Printouts from CIPD's website, however, do not indicate that chartered fellowship requires outstanding achievements as judged by recognized national or international experts. Rather, CIPD actively solicits lower-level members to upgrade to chartered fellowship after acquiring "a master's-level qualification" and accumulating "at least three years' current experience working consistently at a senior level." Academic study and employment experience are not inherently outstanding achievements. The website indicates that the application process for chartered membership includes an "experience assessment" by "one of our experienced CIPD HR assessors." There is no indication that the assessors are recognized national or international experts. (There is also no presumption to that effect, because the burden of proof is on the Petitioner.)

The Petitioner has not established that the Beneficiary satisfies this criterion.

> *Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.* 8 C.F.R. § 204.5(h)(3)(iv)

The Director concluded, without explanation, that the Petitioner had submitted sufficient evidence to meet this criterion.

The Petitioner states that the Beneficiary "sat on an excess of 100 interview panels for senior-level positions throughout his career" and "helped evaluate and interview key senior level candidates for position[s] within the pharmaceutical industry." The Petitioner did not explain how interviewing job candidates and evaluating their credentials amount to judging the work of those candidates (which is different and distinct from judging the fitness of particular candidates for employment); it is not evident to what extent the Beneficiary has first-hand knowledge of the work of these candidates. Furthermore, the Petitioner has not explained how prospective employees "within the pharmaceutical industry" are in the same (or allied) field as the Beneficiary, whose field is human resources management.

The Petitioner also points to the Beneficiary's role as an associate lecturer at [redacted] in which capacity he evaluated the work of students in classes regarding "a range of HR, Business Strategy, Research and Employment Law subjects." The Beneficiary, here, evaluated student papers and examinations, rather than the work of individuals employed in the field of human resources or a related

field. Also, the Beneficiary was not brought in as a judge, but rather was hired as a part-time lecturer whose duties would include evaluating what the students produced.

The regulation, as worded, requires "participation as a judge" rather than simply working in a capacity that involves some degree of "judging the work of others" among other duties. The Petitioner has not shown that performing the expected duties of a university lecturer amounts to participation as a judge in this way.[2]

> *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)

In order to satisfy this criterion, the Petitioner must establish that not only has the Beneficiary made original contributions, but also that those contributions have been of major significance in the field. For example, the contributions may have been widely implemented throughout the field, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance. The phrase "major significance" is not superfluous and, thus, it has some meaning. *See Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F. 3d 28, 31 (3rd Cir. 1995) quoted in *APWU v. Potter*, 343 F.3d 619, 626 (2nd Cir. Sep 15, 2003).

The Petitioner asserts that, because the Beneficiary works in business rather than in the sciences, his contributions will not take the form of "published material, patents, copyrights, [or] trademark material." The Petitioner contends that "evidence such as an Annual Report, policy release, or emails are appropriate to corroborate original business strategy." These materials might establish the nature of the Beneficiary's work, but the significance of those contributions is not self-evident. Field-wide influence on human resources practices is more significant than internal actions that affect only one company or family of companies.

The former chief executive officer of [redacted] describes the Beneficiary's five years as head of human resources there, and states that the Beneficiary's "contributions and interventions transpired to be a model of best practice. [The Beneficiary] shared practices and policies with HR practitioners from other organisations," and "transformed the HR operating model from being a reactive administrative function to being a trusted and respected strategic business partner," while moving in-house many human resources functions previously delegated to outside consultants.

The official of [redacted] asserts that the Beneficiary "proposed a HR operating model" that was implemented by "the [redacted] (a wholly owned subsidiary of [redacted] . .) as well as to over 40 Governing Bodies of Sport that received some level of funding from [redacted] and "sporting clubs and community organisations who were also in receipt of . . . government investment." The official provides few details about this model except to state that [redacted] now provides "a bespoke HR service to the governing bodies of sport" without the "need to add extra staff to support

[2] Had the proceeding reached a final merits determination, we would have taken note that "judging" activities that are inherent to a particular occupation — such as grading the papers and tests of one's own students, and selecting the most qualified candidate for a job opening — cannot serve to distinguish those at the very top of the field from the rest, because everyone so employed would perform these "judging" tasks. To hold otherwise would force the untenable conclusion that acclaim is inherent to the occupations themselves.

the new model." The Petitioner does not submit direct evidence to show that this new model extended beyond government-sponsored sports organizations. The above-mentioned official does not show that he is in a position to speak for other entities regarding their claimed adoption of HR practices originated by the Beneficiary.

The importance of the Beneficiary's contributions within [redacted] attest to his critical role there, which relates to a different (granted) criterion. Significance to one employer, however, does not necessarily translate to significance in the field as a whole. The letter from the former [redacted] official indicates that other organizations adopted some of the Beneficiary's practices, but the record does not elaborate on those contributions or corroborate them first-hand. Praise for the Beneficiary's performance as a human resources manager for a particular company does not show how his contributions are of major significance in the field of human resources management.

The Beneficiary was one of 14 executive committee members named in the 2009-2010 annual report of the [redacted] The Petitioner states that the Beneficiary's "experience in governance played a dominant role in informing the Corporate Plan" for 2009-2012. The Petitioner also served on the advisory board of [redacted] The Petitioner does not adequately explain how the Beneficiary's service on these boards constituted contributions of major significance to the field of human resources management, as opposed to the internal structure and management of the organizations that employed him.

The Petitioner states that the Beneficiary "has been invited to speak at four (4) high-level human resources conferences, demonstrating his original contributions to the field of human resources." It is not clear whether the Petitioner means the conference appearances were, themselves, contributions, or rather that the Beneficiary earned his invitations through his prior contributions; the Petitioner makes assertions that imply both arguments. Either way, the Petitioner must establish the nature of the original contribution and demonstrate its major significance. It cannot suffice to say that, given the circumstances, one could reasonably conclude that the Beneficiary must have made some unspecified original contribution of major significance.

A conference presentation at a business conference *can* constitute an original contribution of major significance, if the presentation includes original ideas that are then widely adopted throughout the field. The burden remains on the Petitioner to show that the Beneficiary's presentations had this impact. It cannot suffice to describe the Beneficiary's presentations or speeches, or to document that they occurred. The Petitioner states that the Beneficiary's "contributions have an impact on the field of employee/human relations and strategy in that he will influence the strategy and business decisions of key HR leaders at U.S. organizations." The Petitioner must specify and document this influence; it is not sufficient to contend that the Beneficiary's efforts "will influence" other businesses.

All four conferences were organized by [redacted] which describes itself as '[redacted] organization dedicated to producing high quality conferences in high-grade environments solely focused on organizational development to prepare today[']s senior executives for the future of work." The Petitioner notes that [redacted] claims "the highest-grade speakers," but this assertion comes from the organization's own self-serving promotional materials and has little weight as objective evidence.

An email message from [redacted] to the Beneficiary indicates that the invited speakers are senior "HR practitioners . . . with large scale organizations," indicating that the focus was on the size of the companies rather than the specific accomplishments of their HR officers. The message also indicates that participants are "brought on by word-of-mouth and relationships with our regular audience." The Petitioner states that this is evidence of the Beneficiary's reputation, but this is a general statement about the conference participants that is not specific to the Beneficiary. As such, it is not presumptive evidence that the Beneficiary made some unspecified significant contribution.

Two of the four conferences occurred after the petition's April 2019 filing date, and the Beneficiary "was not able to attend [a February 2018 conference] due to a work conflict." As a result, the Beneficiary attended only one of the four conferences before the filing date. The conference in question was a "session dedicated to preparing [redacted]s senior HR practitioners with large scale organizations for the future of work." The Beneficiary was one of five participants in a 40-minute panel discussion on [redacted]' The record does not document the content of the Beneficiary's contributions to this discussion or show its effect on the attendees. The record also does not corroborate the Petitioner's claim that the Beneficiary was a "keynote speaker" rather than one member of a multi-person panel.

The local [redacted] focus of the conference would appear to limit the scope of its direct impact. The Petitioner does not show how the Beneficiary's remarks at the conference influenced the HR field, in the five weeks between the February 27 conference and the April 5 filing date, to an extent sufficient to establish major significance.

The Director found that contributions to one's employer are not of major significance in the field if the impact is entirely or largely limited to that employer. The Director acknowledged the claim that other organizations adopted the Petitioner's work with [redacted] but found that the Petitioner "did not provide independent objective evidence to support the claims."

The Petitioner contends that the Director should have given more weight to letters in the record, because the writers have first-hand knowledge of the Beneficiary's work in the field. These letters describe how the Beneficiary's work affected his various employers, but this impact on the internal personnel policies of individual companies does not translate into major significance in the field.

> *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 Director found that the Petitioner did not satisfy this criterion. We disagree.

The record does not support the reasons the Director cited for the determination. For example, the Petitioner states that the Beneficiary's base salary is $300,000 per year, but at the time of filing, the Petitioner had not yet employed the Beneficiary for a full calendar year, and therefore had not paid him $300,000 yet. But the Beneficiary's *rate* of pay — $11,538.46 every two weeks — is *equivalent* to $300,000 per year. A beneficiary need not receive one lump-sum salary payment per year, or a full year's

salary, for the *rate* of pay to be properly considered. The interval between payments, whether quarterly, monthly, or (in this case) biweekly, is immaterial to the annualized amount paid.

The record, including statistics from government sources, indicates that the Beneficiary's salary is objectively high, beyond slightly exceeding the local average. Because we find that this evidence meets the criterion, we need not discuss the evidence and information relating to the Beneficiary's earlier employment.

B. Sustained National or International Acclaim

Because we do not find that the Petitioner has shown that the Beneficiary meets at least three of the above criteria, we need not render a final merits determination as described in *Kazarian*, 596 F.3d at 1119-20.[3] Nevertheless, because the Director granted two criteria and we granted a third (while withdrawing one previously granted), we will briefly discuss the issues that we would have explored in a final merits determination.

The statutory threshold is sustained national or international acclaim; 8 C.F.R. § 204.5(h)(2) requires a showing that the Beneficiary is in the small percentage at the very top of the field. In this instance, the Petitioner shown that the Beneficiary's past and present employers have been deeply impressed with his abilities in his field, and that his work has benefited those employers and some other organizations with which the Beneficiary has been involved. The Beneficiary's recognition and reputation, however, have not been shown to rise to the very high level of sustained national or international acclaim. Such acclaim would be throughout the field, rather than largely limited to the Beneficiary's own employers and close colleagues.

The Petitioner observes that [redacted] invites participants based on "word of mouth," but this term is too vague to indicate that the Beneficiary is particularly well-known in the field. The Beneficiary has also received a number of what appear to be unsolicited job offers from recruiters, but recruitment is not necessarily indicative of acclaim; the recruiters do not indicate how they became aware of the Beneficiary and his work. Because the burden of proof is on the Petitioner, there is no presumption of acclaim.

The Petitioner asserts: "The diversity of [the Beneficiary's] work . . . demonstrates his sustained acclaim and his standing at the top of his field." The Beneficiary has certainly worked in high-ranking positions for large and important employers, but this is not intrinsically evidence of acclaim. By way of analogy, 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).

The Petitioner places considerable emphasis on the Beneficiary's status as a chartered fellow of CIPD, but the record does not establish that this is a particularly rare honor. Unlike organizations such as the

[3] *See also* USCIS Policy Memorandum PM 602-0005.1, *Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator's Field Manual (AFM) Chapter 22.2, AFM Update AD11-14* 4 (Dec. 22, 2010), https://www.uscis.gov/legal-resources/policy-memoranda (stating that USCIS officers should then evaluate the evidence together when considering the petition in its entirety to determine if the petitioner has established, by a preponderance of the evidence, the required high level of expertise for the immigrant classification).

National Academy of Sciences which elect new members through a restrictive nomination process, CIPD actively solicits new members and encourages them to apply for membership upgrades, culminating in chartered fellowship. Materials in the record show that CIPD boasts of its large membership size (over 150,000), which is antithetical to exclusivity; the record does not show what proportion of those members are chartered fellows. We note that membership upgrades include a significant application fee as well as much higher dues than lower membership levels, giving CIPD a clear financial incentive to encourage, and approve, upgrade applications.

The Petitioner contends that "human resources leaders have sought him out to speak to other leaders about his unique human resources strategy." The record establishes the Beneficiary's conference activity, but does not contain sufficient evidence to support the Petitioner's claim that organizers specifically sought out the Beneficiary owing to "his unique human resources strategy."

The record portrays the Beneficiary as a successful, executive-level worker in his field, but success is not synonymous with acclaim, and the evidence does not support a number of the Petitioner's conclusions.

III. CONCLUSION

The Petitioner has not submitted the required initial evidence of either a one-time achievement or documents that meet at least three of the ten criteria. The record in the aggregate 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. Here, the Petitioner has not shown that the significance of the Beneficiary's 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 Beneficiary 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 the Beneficiary's eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.