MATTER OF R-R-G-

DATE: DEC. 21, 2015

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a physician, seeks classification as an individual of extraordinary ability in the sciences. *See* Immigration and Nationality Act (the Act) § 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). The Director, Texas Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

I. PERTINENT FACTS AND PROCEDURAL HISTORY

The classification the Petitioner seeks makes visas available to foreign nationals 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 determined that the Petitioner had not satisfied the initial evidence requirements set forth at 8 C.F.R § 204.5(h)(3), which requires a one-time achievement or meeting at least three of the ten regulatory criteria. On appeal, the Petitioner submits a brief.

For the reasons discussed below, we agree that the Petitioner has not established her eligibility for the classification sought. Specifically, the Petitioner has not documented a one-time achievement pursuant to 8 C.F.R. § 204.5(h)(3), or provided evidence that satisfies at least three of the ten regulatory criteria set forth in the regulations at 8 C.F.R. § 204.5(h)(3)(i)-(x). As such, the Petitioner has not demonstrated that she is one of the small percentage who are at the very top in the field of endeavor, and that she has sustained national or international acclaim. *See* 8 C.F.R. § 204.5(h)(2), (3).

II. RELEVENT LAW AND REGULATIONS

Section 203(b) of the Act states, in pertinent part, that:

> (1) Priority workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):
>
> (A) Aliens with extraordinary ability. -- An alien is described in this subparagraph 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 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 the Petitioner does not submit this documentation, then she must provide sufficient qualifying items that meets at least three of the ten categories of evidence listed at 8 C.F.R. § 204.5(h)(3)(i) – (x).

Satisfaction of at least three criteria, however, does not, in and of itself, establish eligibility for this classification. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the evidence is first counted and then, if satisfying the required number of criteria, considered in the context of a final merits determination). *See also Rijal v. USCIS*, 772 F.Supp.2d 1339 (W.D. Wash. 2011) (affirming our proper application of *Kazarian*), *aff'd*, 683 F.3d. 1030 (9th Cir. 2012); *Visinscaia v. Beers*, 4 F.Supp.3d 126, 131-32 (D.D.C. 2013) (finding that U.S. Citizenship and Immigration Services (USCIS) appropriately applied the two-step review); *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (holding that the "truth is to be determined not by the quantity of evidence alone but by its quality" and that USCIS examines "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").

III. ANALYSIS

A. Evidentiary Criteria[1]

> *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.*

In the initial cover letter, the Petitioner addressed this criterion in conjunction with the leading or critical role criterion at 8 C.F.R § 204.5(h)(3)(viii), but did not explain how any of her roles involved

[1] We have reviewed all of the evidence the Petitioner has submitted and will address those criteria the Petitioner addresses or for which the Petitioner has submitted relevant and probative evidence.

judging the work of others. The Petitioner provided letters from experts in her field. The Director determined that the Petitioner met the requirements of this criterion in the RFE and final decision. We conduct appellate review on a *de novo* basis. *See Siddiqui v. Holder*, 670 F.3d 736, 741 (7th Cir. 2012); *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004); *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989). For the reasons outlined below, a review of the record of proceeding does not reflect that the Petitioner submitted sufficient documentary evidence establishing that she meets the plain language of this criterion and the Director's favorable determination on this issue is hereby withdrawn.

This criterion requires not only that the Petitioner was selected to serve as a judge, but also that the Petitioner is able to produce evidence that she actually participated as a judge. The phrase "a judge" implies a formal designation in a judging capacity, either on a panel or individually as specified at 8 C.F.R. § 204.5(h)(3)(iv). Dr. an interventional cardiologist and senior scientist at the in Israel, affirmed that he worked with the Petitioner at He asserted that she "analyzed and reviewed" journal articles for journal club meetings attended by her local colleagues and that she served on committees for which she had "heightened responsibilities."

Dr. did not suggest that the Petitioner reviewed manuscripts as a peer-reviewer for a journal, and the record does not contain any letters from journals confirming such service. Dr. also did not sufficiently explain how presenting an analysis and review of articles at a journal club meeting involves participation as "a judge" of the work of others. Finally, Dr. did not detail any judging responsibilities as a committee member. As the Petitioner has not provided sufficient documentation that she meets the plain language requirements of this criterion, we hereby withdraw the Director's favorable determination under this criterion.

Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.

The evidence must establish that the contributions rise to the level of major significance in the field as a whole, rather than to a project or to an organization. The phrase "major significance" is not superfluous and, thus, it has some meaning. *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). Contributions of major significance connotes that the Petitioner's work has significantly impacted the field. *See* 8 C.F.R. § 204.5(h)(3)(v); *see also Visinscaia*, 4 F. Supp. 3d at 135-136.

The Petitioner initially indicated that she has performed research that is regarded as very important and significant among her peers, and that it is "very difficult to objectively document research acumen and abilities . . . ." She also requested U.S. Citizenship and Immigration Services (USCIS) "take into consideration the opinion of [her] peers that she is regarded as being uniquely skilled as a physician and a research scientist" and provided published articles and presentations. After the Director requested additional evidence, the Petitioner offered documentation that she asserted

supports the information in the expert letters. The Director discussed the specific information within the expert letters, and determined that the Petitioner did not meet the requirements of this criterion.

On appeal, the Petitioner indicates that her record of 92 citations of her work supports her eligibility under this criterion. This number is from the Google Scholar results the Petitioner provided in response to the Director's request for evidence (RFE), which are dated June 7, 2012, nearly 11 months after the Petitioner filed the petition. More relevant to the Petitioner's eligibility are her citations as of the date of filing. 8 C.F.R. § 103.2(b)(1), (12); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). The Petitioner had garnered 65 citations at the time she filed the petition. Moreover, both citation numbers are the sum spread across at least eight published works with the most frequently cited article receiving 21 cites. The Petitioner has not sufficiently explained how a scholarly article receiving 21 citations or several articles receiving 65 citations exhibits her impact within the field in a manner consistent with this criterion's requirements. For example, she did not provide the citation rates of other recognized contributions of major significance for comparison purposes. Nor has the Petitioner shown that a notable number of the citing authors placed unusual reliance on her work. Specifically, the example citations in the record cite the Petitioner's study as one of dozens of other studies and do not single out the Petitioner's work as significantly notable among other research in the field.

Within the initial filing, the Petitioner discussed the media coverage of her work stating: "Please also find articles and various publication [*sic*] regarding the significance of the clinical procedures in which [the Petitioner] expertise. Please note the gravity of some of the heart diseases and conditions outlined in these publications, and that many of these procedures are truly life saving." In response to the RFE, the Petitioner did not specifically mention media attention. On appeal, she indicates that the Director failed to consider articles and releases from sources such as and and local articles that reference one of her articles.

The study on heart disease prevention in firefighters has garnered some attention. Regarding the article titled " ' appearing in the online version of it discussed Dr. and the sponsored study that the Petitioner worked on with Dr. but it did not mention the Petitioner's association with the study. Similarly, " " in did not mention the Petitioner by name. While the Petitioner is credited with coauthoring scholarly work that is referenced in the study article, she is listed in the eighth position as one of 13 named coauthors. The title of the article is, ' " in the The Petitioner did not offer a letter from Dr. describing her level of involvement on the published work. Although Dr. , Medical Director at referenced the Petitioner being associated with the study mentioned above, she too did not specify how much of the credit for the study is owed to the Petitioner.

The Petitioner identified a reference to one of her presentations titled, '[redacted]" under the Related Links portion following the [redacted] article. However, this presentation was not mentioned within the article referencing Dr. [redacted] above, and the Petitioner has not explained how a link to her work without any discussion shows the importance of her work in the field. In reference to the website [redacted] mentioning the [redacted] funded study, the online article does not mention the Petitioner. Again, while we acknowledge that the Petitioner is one of the 13 authors, the first author, designated as the one to whom correspondence should be addressed, Dr. [redacted], has not confirmed the nature of the Petitioner's role on the overall [redacted] funded project that has garnered attention.

The Director noted that the letters do not identify contributions of major significance in the field and the Petitioner does not specifically address this concern on appeal. The record contains email correspondence from Dr. [redacted] an interventional cardiologist at the [redacted] in Oklahoma. Dr. [redacted] explained that one of the Petitioner's clinical studies confirmed results originally obtained in France, allowing a paradigm shift in the United States that had already occurred in France. Dr. [redacted] did not explain how confirming results obtained in France is an original contribution of major significance in the field as a whole. The remaining letters spoke favorably of the Petitioner's skills and abilities as a specialist, but they did not explain how the Petitioner's contributions in the field have been of major significance. Rather, they relied on the acceptance of the Petitioner's work for publication or presentation as the basis for their conclusion that the results were of major significance. More probative, however, is the response in the field after publication. As discussed above, the Petitioner has not sufficiently documented that her citation record is indicative of a contribution of major significance in the field.

Solicited letters from colleagues that do not specifically identify contributions or specific examples of how those contributions influenced the field are insufficient. *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009), *aff'd in part*, 596 F.3d 1115 (9th Cir. 2010).[2] The opinions of experts in the field are not without weight and have been considered above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive confirmation of eligibility; USCIS may, as this decision has done above, evaluate the content of those letters as to whether they support the foreign national's eligibility. *See id.* at 795; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Caron Int'l*, 19 I&N Dec. at 795; *see also Matter of Soffici*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. at 190); *see also Visinscaia*, 4 F. Supp. 3d at 134-35 (upholding our decision to give minimal weight to vague, solicited letters

[2] In 2010, the *Kazarian* court reiterated that our conclusion that "letters from physics professors attesting to [a petitioner's] contributions in the field" were insufficient was "consistent with the relevant regulatory language." 596 F.3d at 1122.

from colleagues or associates that do not provide details on contributions of major significance in the field). We have considered all the reference letters, including those not specifically mentioned. They did not sufficiently explain how the Petitioner has made contributions of major significance in the field.

Based on the foregoing, the Petitioner has not submitted evidence that meets the plain language requirements of this criterion.

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.

The Director determined the Petitioner met the requirements of this criterion. The Petitioner has submitted sufficient evidence, including the article titled, "[redacted]" in [redacted] to establish that she meets this criterion.

Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.

In response to the Director's RFE, the Petitioner asserted eligibility under this criterion relying on her conference presentations as comparable evidence pursuant to 8 C.F.R. § 204.5(h)(4). On appeal, the Petitioner no longer relies on meeting this criterion. Therefore, the Petitioner has abandoned this criterion. *Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005); *Hristov v. Roark*, No. 09–CV–27312011, 2011 WL 4711885 at *1, 9 (E.D.N.Y. Sept. 30, 2011) (the court found the plaintiff's claims to be abandoned as he failed to raise them on appeal to the AAO). Accordingly, the Petitioner has not submitted qualifying material under this criterion.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.

The Director analyzed the evidence included for this criterion and found that the Petitioner did not establish her eligibility. On appeal, the Petitioner does not contest the Director's findings for this criterion or offer additional discussion. Therefore, the Petitioner has abandoned this criterion. *Sepulveda*, 401 F.3d at 1228 n.2; *Hristov*, 2011 WL 4711885, at *9. Accordingly, the Petitioner has not submitted qualifying material under this criterion.

B. Summary

For the reasons discussed above, we agree with the Director that the Petitioner has not submitted the requisite initial evidence, in this case, which satisfies three of the ten regulatory criteria.

IV. CONCLUSION

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the Petitioner has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of his or her field of endeavor.

Had the Petitioner submitted the requisite evidence under at least three evidentiary categories, in accordance with the *Kazarian* opinion, the next step would be a final merits determination that considers the entire record in the context of whether or not the Petitioner has demonstrated: (1) a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor," and (2) that the foreign national "has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." 8 C.F.R. § 204.5(h)(2) and (3); *see also Kazarian*, 596 F.3d at 1119-20. As the Petitioner has not done so, the proper conclusion is that the Petitioner has not satisfied the antecedent regulatory requirement of presenting items that meet the initial requirements set forth at 8 C.F.R § 204.5(h)(3) and (4). *Kazarian*, 596 F.3d at 1122. Nevertheless, although we need not provide the type of final merits determination referenced in *Kazarian*, a review of the evidence in the aggregate supports a finding that the Petitioner has not shown the level of expertise required for the classification sought.[3]

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the Petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the Petitioner has not met that burden.

ORDER: The appeal is dismissed.

Cite as *Matter of R-R-G-*, ID# 14866 (AAO Dec. 21, 2015)

[3] We maintain *de novo* review of all questions of fact and law. *See Soltane v. United States Dep't of Justice*, 381 F.3d 143, 145 (3d Cir. 2004). In any future proceeding, we maintain the jurisdiction to conduct a final merits determination as the office that made the last decision in this matter. 8 C.F.R. § 103.5(a)(1)(ii); *see also* INA §§ 103(a)(1), 204(b); DHS Delegation Number 0150.1 (effective March 1, 2003); 8 C.F.R. § 2.1 (2003); 8 C.F.R. § 103.1(f)(3)(iii) (2003); *Matter of Aurelio*, 19 I&N Dec. 458, 460 (BIA 1987) (holding that legacy INS, now USCIS, is the sole authority with the jurisdiction to decide visa petitions).