MATTER OF Y-K-

DATE: SEPT. 18, 2015

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, an individual who works in the field of biomaterials, seeks classification as a person "of extraordinary ability" in science. *See* Immigration and Nationality Act (the Act) § 203(b)(1)(A); 8 U.S.C. § 1153(b)(1)(A). The Director, Nebraska Service Center, denied the petition. The matter is now before us on appeal. The appeal will be sustained.

The classification the Petitioner seeks on behalf of the Beneficiary 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 documentation that meets at least three of the ten regulatory criteria. On appeal, the Petitioner submits a brief and other materials. For the reasons discussed below, the Petitioner has established his eligibility for the classification sought.

I. LAW

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

> (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 two different methods by which a petitioner can demonstrate extraordinary ability sustained by national or international acclaim and the recognition of the petitioner's achievement in the field. First, a petitioner can show a one-time achievement (that is, a major, internationally recognized award). Second, a petitioner can satisfy at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i)-(x). If a petitioner opts for this second method of demonstrating extraordinary ability, the analysis is two-part: First, we assess whether the petitioner has submitted evidence that meets at least three of the ten categories. If so, we then assess the record in its totality to determine if the petitioner is indeed one of those individuals in that small percentage who have risen to 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 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 we 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 U.S. Citizenship and Immigration Services (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").

II. ANALYSIS

A. Evidentiary Criteria

The Petitioner has satisfied the following criteria.

> *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.*

The Director determined that the Petitioner demonstrated eligibility for this criterion. A review of the record reflects that the Petitioner submitted sufficient documentary evidence to show that he participated as a judge of the work of others in the same or an allied field, as required by 8 C.F.R. § 204.5(h)(3)(iv). Specifically, the Petitioner has served as a peer-reviewer for eight scientific journals. Accordingly, the Petitioner has met this criterion.

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

To satisfy this criterion, the Petitioner's original contributions must be of "major significance" in the field as whole. In support of the significance of his scientific contributions, the Petitioner provided

letters of recommendation, citations of his work by others in the field, and invitations to submit papers, write chapters, and speak at conferences. The Director determined that the Petitioner did not meet the requirements of this criterion, stating that the letters of recommendation and citations to his papers were not commensurate with contributions of major significance. On appeal, the Petitioner indicates that the Director did not fully and adequately consider the evidence presented.

The Petitioner received his Ph.D. in Biomedical Engineering from . He performed postdoctoral research at the and the and is currently conducting research at . According to the Petitioner, his contributions to the field of biomaterials include his research findings on polymer microparticles, bioceramic scaffolds, and their application in tissue regeneration.

To show his contributions in the field, the Petitioner provided nine letters of recommendation that discuss his work.[1] A letter from an associate professor of Orthopaedic Surgery and Bioengineering at the stated that, while grafts are currently used for bone repair, their application is limited due to the scarcity of quality donor bone and immunopathogenesis. Synthetic ceramic scaffolds are a promising alternative to grafting, however, major issues arise due to insufficient vascularization needed to provide rapid blood supply for cell survival and tissue development. According to the the Petitioner was the first to develop the method of co-culturing endothelial cells with bone marrow stem cells on a β-TCP ceramic scaffold. Utilizing extracellular matrix proteins secreted by bone marrow stem cells to support the endothelial cells, the Petitioner demonstrated how the co-culture allows almost arbitrary control over the ratio of bone marrow stem cells to endothelial cells, which can promote optimized vascular networks. characterizes this work as a "breakthrough."

[2] an associate professor in the Department of Orthopedic Surgery at noted that the Petitioner developed a physical technique for depositing an extracellular matrix (ECM) on a ceramic scaffold for inducing the differentiation of bone marrow stem cells, which "presents a perfect example of the integration of bioceramic scaffold for flexible clinical applications." an assistant professor in the Department of Electrical and Computer Engineering at the explained that the Petitioner's work "has provided new insights to researchers on how to use supercritical fluid technique to design various polymer loaded drug nanoparticles for delivery system." further stated that the Petitioner's work has served as the foundation for a number of articles published by other researchers and has inspired his own work using a scalable method to prepare spherical nanoshells.

---

[1] We discuss only a sampling of these letters, but have reviewed and considered each one.

[2] The Petitioner currently works as a researcher in lab. The Director noted the relationship between and the Petitioner in the denial and called into question the objectivity of a close colleague. The Petitioner, however, provided eight other letters from independent authors who have similar opinions of the Petitioner's work.

In describing the application of the Petitioner's findings, an assistant professor of Orthopaedic Science at the Medical Center, asserted that the Petitioner's work "provided useful guidance" for his own study on drug delivery from scaffolds. indicated that he used a similar approach and achieved positive results in vivo. Similarly, a scientist at the noted that he referenced the Petitioner's work on modifying TCP scaffolds in his own research. He explained: "Based on [the Petitioner's] work, my group took an alternative approach where we used drug-like compounds in the presence of a porous TCP scaffold to stimulate osteogenic signal pathways to improve bone growth."

In this case, each of the nine recommendation letters provided a detailed explanation of the Petitioner's work, as well as examples of its impact in the field. Several letters explained how the authors are currently using the Petitioner's findings in their own research. The Petitioner's extensive publishing and citation history supports these letters. At the time of filing, he had authored 70 papers published in top journals with heavy citation by others in the field. The journals and are ranked the number one and number three journals, respectively, in the field of biomaterials, and both have published the Petitioner's articles. ranked number one in materials science and number four in multidisciplinary chemistry, has also published his work. reports 878 total citations to the Petitioner's papers. Significantly, many of the Petitioner's articles also have individually garnered large numbers of citations. The Petitioner is the first author on five of his ten most cited papers. Thus, the subjective opinions of the Petitioner's reference writers are supported and corroborated by objective citation statistics.

For the reasons discussed above, the Petitioner has demonstrated that his accomplishments have impacted the field at a level consistent with a contribution of major significance. Accordingly, the Petitioner has met 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 that the Petitioner satisfied this criterion. A review of the record reflects that the Petitioner has authored or co-authored 70 scientific papers. Accordingly, the Petitioner has met this criterion.

B. Summary

The Petitioner has submitted the requisite initial evidence to satisfy three of the ten regulatory criteria.

C. Final Merits Determination

The next step is a final merits determination that considers all of the evidence 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 alien has sustained national or international acclaim and that his or her

achievements have been recognized in the field of expertise." Section 203(b)(1)(A) of the Act; 8 C.F.R. §§ 204.5(h)(2), (h)(3). *See also Kazarian*, 596 F.3d at 1119-20.

In the present matter, the Petitioner has submitted extensive documentation of his work in the field of biomaterials. As discussed above, he has shown an accomplished publishing history. The record indicates that the Petitioner has produced a high volume of published work that is also of high substantive quality as demonstrated both by the number of citations his work has received, as well as by the recommendation letters that explain the significance of the Petitioner's work in the field as a whole. The Petitioner provided further documentation regarding his acclaim in the field as an author for chapters in two different textbooks. He has also peer-reviewed articles for eight different journals, given four talks at conferences, and presented his work at many others. In the aggregate, the evidence shows that the Petitioner is a leader in the field of biomaterials with extraordinary ability.

In light of the evidence discussed above and other corroborating evidence of record, the Petitioner's achievements in the aggregate are commensurate with sustained national and international acclaim at the very top of his field.

III. CONCLUSION

The documentation submitted in support of a claim of extraordinary ability must show that the Petitioner has achieved sustained national or international acclaim and is one of the small percentage of individuals at the very top of his field of endeavor. When considered in light of the analysis outlined in the *Kazarian* decision, the Petitioner has submitted the requisite evidence to satisfy three evidentiary categories and also to demonstrate his extraordinary ability when considered in a final merits 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 met that burden. Therefore, the Petitioner has shown eligibility for the benefit sought under section 203(b)(1)(A) of the Act.

ORDER: The appeal is sustained.

Cite as *Matter of Y-K-*, ID# 13187 (AAO Sept. 18, 2015)