U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF B-C-

DATE: APR. 11, 2016

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, an assistant professor, seeks classification as an individual with extraordinary ability in the sciences. *See* Immigration and Nationality Act (the Act) § 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who are able to demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director, Texas Service Center, denied the petition. The Director concluded that the Petitioner had not satisfied the initial evidence requirements set forth at 8 C.F.R. § 204.5(h)(3), which necessitates either (1) documentation of a one-time major achievement, or (2) materials that show he meets at least three of ten regulatory criteria listed under 8 C.F.R. § 204.5(h)(3)(i)-(x). We dismissed a subsequent appeal. The matter is now before us on a motion to reopen. In his motion, the Petitioner discusses his education, experience, and research.[1]

We will deny the motion to reopen.

I. LAW

By statute, the extraordinary ability immigrant visa classification requires that foreign nationals demonstrate sustained national or international acclaim and present extensive documentation of their achievements. Specifically, section 203(b)(1)(A) of the Act states, in pertinent part:

> Aliens with extraordinary ability. -- An alien is described in this subparagraph if –

[1] On motion, the Petitioner references his qualifications as an "outstanding professor," which is a separate classification set forth at section 203(b)(1)(B) of the Act that makes immigrant visas available to foreign nationals who can demonstrate international recognition as outstanding in their academic field. He further notes that he now has a full-time research faculty position to continue his "internationally renowned research." The regulation at 8 C.F.R § 204.5(i)(1) provides that a U.S. employer must file a petition under the outstanding professor classification. We will review the evidence under the standards for individuals of extraordinary ability under section 203(b)(1)(A) of the Act, the classification the Petitioner specified on the petition.

(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 has 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 a beneficiary's sustained acclaim and the recognition of his achievements in the field through a one-time achievement (that is a major, internationally recognized award). If that petitioner does not submit this documentation, then it must provide sufficient qualifying evidence indicating that he meets at least three of the ten criteria 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 documentation is first counted and then, if fulfilling 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 U.S. Citizenship and Immigration Services' (USCIS) 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 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").

Finally, with respect to motions, a motion to reopen must state the new facts to be provided and be supported by affidavits or other documentation. 8 C.F.R. § 103.5(a)(2). Any new facts, however, must relate to eligibility at the time the Petitioner filed the petition. *See* 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).

II. ANALYSIS

On December 13, 2013, the Petitioner filed the Form I-140, Immigrant Petition for Alien Worker. Upon consideration of the Petitioner's initial submission and response to the Director's request for evidence (RFE), the Director concluded that the Petitioner had not satisfied at least three of the regulatory criteria. In our appeal decision, we reviewed all of the offered materials and thoroughly addressed those criteria the Petitioner stated he met or for which he provided relevant and probative

exhibits. We affirmed the Director's favorable determination that the Petitioner sufficiently documented that he had judged the work of others under 8 C.F.R. § 204.5(h)(3)(iv) and authored scholarly articles under 8 C.F.R. § 204.5(h)(3)(vi). We then found that he did not meet either the original contributions criterion described in the regulation at 8 C.F.R. § 204.5(h)(3)(v) or the leading or critical role criterion as set forth in the regulation at 8 C.F.R. § 204.5(h)(3)(viii).

On motion, the Petitioner maintains that he has provided published material about himself, 8 C.F.R § 204.5(h)(3)(iii), and shown his contributions of major significance in the field, 8 C.F.R § 204.5(h)(3)(v). For the reasons discussed below, we find that the Petitioner has abandoned the leading or critical role criterion and has not corroborated his position that he meets the contributions or published material criteria.

As the Petitioner does not address the leading or critical role criterion at 8 C.F.R § 204.5(h)(3)(viii) on motion, he has abandoned that stance. *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); *see also Hristov v. Roark*, No. 09–CV–27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (plaintiff's positions were abandoned as he failed to raise them on appeal to the AAO).

With respect to the contributions of major significance criterion at 8 C.F.R § 204.5(h)(3)(v), our decision discussed the submitted exhibits, including citations, reference letters, and grants, and found that the Petitioner had not demonstrated that he meets that criterion. The plain language provides that the evidence must establish that the contributions rise to the level of major significance in the field as a whole. 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 135-36.

The record establishes that the Petitioner, who now holds the position of Assistant Professor, is a highly competent researcher. Upon review of the entire record, we affirm our prior finding that his work has been "noticed and referenced," but that "[g]eneral contributions of original research that are inherent to one's occupation do not demonstrate that the Petitioner's contributions are of major significance in the field."

A review of the evidence the Petitioner provides on motion does not overcome these findings. First, although the Petitioner's total number of citations has now risen, articles and citations which postdate the filing of the petition cannot establish eligibility as of that date. *See* 8 C.F.R. § 103.2(b)(1), (12); *Katigbak*, 14 I&N Dec. at 49. Regardless, as stated in our prior decision, the number and content are not indicative of an impact in the field consistent with a contribution of major significance. The review articles the Petitioner includes on appeal does not contain the pages on which the articles discuss the Petitioner's work. Our previous decision noted that the excerpt of the book the Petitioner maintained cites to his research does not contain the reference to the Petitioner. The Petitioner supplies the actual book chapter on motion. While the Petitioner has now shown that this

book referenced his work as confirming that [redacted] increases capillary formation, more probative of the impact of this information is how the field has applied that knowledge. As noted in our previous decision, [redacted] Chief of the Department of [redacted] explained that the Petitioner's research with [redacted] "will lead to novel approaches against cardiovascular diseases and tumor and have positive impact on these diseases." The other book that cites one of the Petitioner's other articles references it as one of four for the "idea of [the reduced form of Glutathione] playing a role in learning and memory processes." This citation is not indicative of the major significance of the Petitioner's contribution.

Regarding the two reference letters the Petitioner resubmits on appeal, similar to those we addressed in our previous decision, they do not provide specific examples of how the Petitioner's work has already impacted the field at large or establish that his findings are of major significance, consistent with the plain language of the regulation. [redacted] an adjunct associate professor at [redacted] explains the importance of the Petitioner's continued identification of anti-lymphoma compounds without identifying how the field is already using the Petitioner's results. [redacted] an associate professor of [redacted] concludes that the Petitioner "will continue to have a great impact on improvement of health and quality of life on a National level, and will substantially benefit health care in our country." While [redacted] suggests a past impact, she does not detail applications of the Petitioner's work. USCIS need not accept primarily conclusory statements. *1756, Inc. v. The Attorney General of the United States*, 745 F. Supp. 9, 15 (D.D.C. 1990). The potential for future influence is not sufficient to satisfy the contributions criterion. 8 C.F.R. § 103.2(b)(1), (12); *Katigbak*, 14 I&N Dec. at 49.

Finally, for the first time on motion, the Petitioner states that he meets the published material criterion based upon review articles and citations in two books. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires "[p]ublished 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." In other words, the published material must be "about" a petitioner and relate to his or her work. Therefore, scholarly or review articles that cite a petitioner's publications do not meet the plain language of this criterion. Rather, they are about the authors' own results or provide a general review of new research in the field. Thus, while the submitted evidence is not relevant to this criterion, it was considered as it relates to the significance of the Petitioner's original contributions under the regulation at 8 C.F.R. § 204.5(h)(3)(v).

In light of the above, the Petitioner has not provided new facts that overcome the conclusions in our prior decision. Further, although we need not conduct the type of final merits analysis referenced in *Kazarian*, a review of the record in the aggregate does not confirm that he has distinguished himself to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The Petitioner, therefore, has not established his eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

III. CONCLUSION

The motion will be denied 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 motion to reopen is denied.

Cite as *Matter of B-C-*, ID# 16156 (AAO Apr. 11, 2016)