U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF S-T-

DATE: AUG. 22, 2016

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a computational fluid dynamics (CFD) scientist, seeks classification as an individual of extraordinary ability in the sciences. *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 Petitioner had satisfied only two of the regulatory criteria, of which he must meet at least three.

The matter is now before us on appeal. In his appeal, the Petitioner submits a brief stating that he meets one additional criterion.

Upon *de novo* review, we will dismiss the appeal.

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 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 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 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).

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 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); *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

The Petitioner currently works as a research and development engineer at [redacted] where he has developed CFD models to solve fluid flow problems. The Director found that he met the scholarly articles criterion under 8 C.F.R. § 204.5(h)(3)(vi) and the leading or critical role criterion under 8 C.F.R. § 204.5(h)(3)(viii) but had not satisfied any of the other criteria at 8 C.F.R. § 204.5(h)(3). On appeal, the Petitioner maintains that he has made original contributions of major significance under 8 C.F.R. § 204.5(h)(3)(v). For the reasons discussed below, the record does not support a finding that the Petitioner meets the plain language requirements of at least three criteria.

A. Evidentiary Criteria[1]

As the Petitioner has not 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).

[1] We will discuss those criteria the Petitioner has raised and for which the record contains relevant evidence.

> *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 Director found that the Petitioner's membership with did not meet the regulatory requirements. Specifically, the Director determined that the Petitioner did not establish that membership requires outstanding achievements of its members, as judged by recognized national or international experts. On appeal, the Petitioner does not address the Director's decision for this criterion or submit documentary evidence. A review of the requirements for this honor society, included in the record, does not reveal that it requires outstanding achievements of its members. For example, while membership in requires a dissertation and/or a limited number of published articles, the Petitioner has not shown that these constitute outstanding achievements for his field. Therefore, the Petitioner has not demonstrated that he meets this criterion.

> *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).

The Petitioner contends that his research in CFD modeling represents original scientific contributions of major significance and points to his citation history and conference presentations. Regarding the citation of others to his work, the Petitioner submitted evidence showing that his published articles garnered approximately 53 citations. Specifically, other researchers cited the Petitioner's article 23 times and the article 18 times. In addition, the Petitioner presented his research at professional conferences, such as at the 2008 and others cited this presentation four times.

Generally, citations confirm that the field has taken some interest in a researcher's work. In this case, the Petitioner has not demonstrated that the number of his citations, considered both individually and collectively, is commensurate with a contribution "of major significance in the field." Again, the number of citations reflects that others are aware of the Petitioner's work; however he has not submitted sufficient materials to establish those citations rise to the level of original contributions of major significance in the field. The Petitioner did not provide examples of researchers relying significantly on his findings, as opposed to merely referencing his work as background. Similarly, participation in conferences demonstrates that his findings were shared with others and may be acknowledged as original contributions based on their selection for presentation. The record of proceedings, however, does not show that his presentations are frequently cited by other researchers or have significantly impacted the field. Publications and presentations are not sufficient under 8 C.F.R. § 204.5(h)(3)(v) absent evidence that they were of "*major* significance." *Kazarian v. USCIS,* 580 F.3d 1030, 1036 (9th Cir. 2009) *aff'd in part* 596 F.3d 1115. In 2010, the *Kazarian* court reaffirmed its holding that we did not abuse our discretion in our adverse finding relating to this criterion. 596 F.3d at 1122.

The Petitioner also offers several recommendation letters from his peers.[2] Although the letters praise the Petitioner's work, they do not explain how the Petitioner's contributions are "of major significance in the field." Specifically, the letters describe the Petitioner's contributions without showing how his work has significantly impacted or influenced the field, so as to demonstrate that he meets the plain language of the regulatory criterion.

For example, a senior researcher at (Czech Republic), described the Petitioner's work in wall boiling models and stated that the Petitioner "plays an important role." however, did not provide further information showing how these models influenced the field at a level of major significance. In addition, concluded that the Petitioner's work "has contributed to the advancement of this field in numerous ways" without presenting more specifics. Moreover, although indicated that he "can say for sure that [the Petitioner] has had a lasting impact with his research," did not elaborate or offer examples as to how the Petitioner's research impacted the field in a significant manner.

Some of the Petitioner's letters, such as from and referred to the Petitioner's published articles as "monumental" and "a testament" to the importance of the Petitioner's work. As discussed above, the Petitioner's citation history does not support a finding that his contributions have been of major significance in the field. Nor does the record include other documentary evidence sufficient to support such statements. Again, while the selection of the Petitioner's articles in professional journals verifies the originality of his work, it does not necessarily reflect that his research is considered of major significance. Neither of these letters explains how the authors have used the Petitioner's published findings in their own work.

Furthermore, the Petitioner offered a letter from who indicated that he has utilized the Petitioner's wall boiling model at his company. Although letter reflects the application of the Petitioner's work by another scientist or company, it does not show that his work is being widely applied in the field, so as to demonstrate original contributions of major significance. Likewise, the letter from the Petitioner's employer, stated that the Petitioner has "greatly contributed" to the success of that company but does not establish that contributions to his employer equate to original contributions of major significance to the field as a whole. *See Visinscaia*, 4 F. Supp. 3d at 134-35 (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).

In addition, the letter from stated that the Petitioner's "work has generally been well received by the computational multiphase flow community and I expect them to find broad applications." A petitioner cannot establish eligibility under this criterion based on the expectation of future significance. Given the descriptions in terms

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

of future applicability and determinations that may occur at a later date, the actual impact on the field has yet to be determined. Eligibility must be demonstrated at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). letter does not provide evidence of past or current contributions of major significance to the field.

Further, the Petitioner's letters praise him as "gifted" and as possessing "diverse" skills and talents. Having a diverse skill set is not a contribution of major significance in and of itself. Rather, the record must be supported by evidence that the Petitioner has already used those unique skills to impact the field at a significant level.

Ultimately, letters that repeat the regulatory language but do not explain how a petitioner's contributions have already influenced the field are insufficient to establish original contributions of major significance. *Kazarian*, 580 F.3d at 1036 *aff'd in part* 596 F.3d at 1115. In 2010, the *Kazarian* court reiterated that the USCIS' conclusion that the "letters from physics professors attesting to [the petitioner's] contributions in the field" were insufficient was "consistent with the relevant regulatory language." 596 F.3d at 1122. The letters considered above primarily contain attestations of the Petitioner's status in the field without providing specific examples of how his contributions rise to a level consistent with major significance in the field. Repeating the language of the statute or regulations does not satisfy a petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, No. 95 CIV. 10729, *1, *5 (S.D.N.Y. Apr. 18, 1997). Moreover, USCIS need not accept primarily conclusory statements. *1756, Inc. v. The U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.C. Dist. 1990). Without supporting evidence, the Petitioner has not met his burden of showing that he has made original contributions of major significance in the field.

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media. 8 C.F.R. § 204.5(h)(3)(vi).

As discussed above, the Petitioner documented his authorship of seven scholarly articles in professional or major trade publications, such as and Thus, the Director concluded that the Petitioner satisfied this criterion, and the record supports that finding.

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 Director determined that the Petitioner's documentation reflected that he, as a research and development engineer, performed in a leading or critical role for an organization that has a distinguished reputation. The Director's finding is consistent with the record of proceeding.

B. Summary

As explained above, the record satisfies only two of the regulatory criteria. As a result, 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 listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

III. CONCLUSION

Had the Petitioner satisfied at least three evidentiary categories, the next step would be a final merits determination that considers all of the filings 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 individual "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), (3); *see also Kazarian*, 596 F.3d at 1119-20. Although we need not provide the type of final merits determination referenced in *Kazarian*, a review of the record in the aggregate supports a finding that the Petitioner has not established the level of expertise required for the classification sought.

The appeal will be dismissed for the above stated reasons. 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, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of S-T-*, ID# 8764 (AAO Aug. 22, 2016)