U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF M-K-E-

DATE: DEC. 21, 2016

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a computer 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 Nebraska Service Center denied the petition, concluding that the Petitioner had satisfied only two of the initial evidentiary 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 at least three criteria.

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), *aff'd*, 683 F.3d. 1030 (9th Cir. 2012); *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"). Accordingly, where a petitioner submits qualifying evidence under at least three criteria, we will determine whether the totality of 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.

II. ANALYSIS

The Petitioner is currently employed as a post-doctoral computer scientist at [redacted] 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). In denying the Petition, the Director found that that the Petitioner met the judging criterion under 8 C.F.R. § 204.5(h)(3)(iv) and the scholarly articles criterion under 8 C.F.R. § 204.5(h)(3)(vi). On appeal, the Petitioner maintains that he meets the original contributions criterion under 8 C.F.R. § 204.5(h)(3)(v) and the leading or critical role criterion under 8 C.F.R. § 204.5(h)(3)(viii). We have reviewed all of the evidence in the record of proceedings, and it does not support a finding that the Petitioner meets the plain language requirements of at least three criteria.

A. Evidentiary Criteria[1]

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. 8 C.F.R. § 204.5(h)(3)(i).

The Director found that the Petitioner's research fellowship, student and travel grants, and did not meet the regulatory requirements. On appeal, the Petitioner does not address the Director's decision for this criterion or submit documentary evidence. A review of the record of proceedings reflects that although the Petitioner submitted evidence of his receipt of the fellowship and grants, he did not submit evidence demonstrating that they are nationally or internationally recognized for excellence in his field consistent with the plain language of this regulatory criterion. Regarding the award, the Petitioner provided a screenshot regarding background and history but did not show that the award is nationally or internationally recognized for excellence. Accordingly, the Petitioner has not established that he meets 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 record contains evidence reflecting that the Petitioner has reviewed articles for scientific journals such as As such, the Director found that the Petitioner met this criterion, and we concur with that determination.

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).

As evidence of the significance of his work, the Petitioner initially submitted documentation showing that his published articles garnered 27 citations, with his article, ' cited 22 times. Generally, citations confirm that the field has taken some interest in a researcher's work. The Petitioner provided an example of an article that cited to his work; however the article does not reflect that his work was singled out as particularly important. Rather, the Petitioner's article was utilized as background information to the authors' paper. In this case, the Petitioner has not demonstrated that the citations to his work, considered both individually and collectively, are commensurate with a contribution "of major significance in the field."

Similarly, the Petitioner offers evidence of his presentations at various conferences, such as the and the Participation in conferences demonstrates that his findings were shared with others and may be acknowledged as original based on their selection

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

for presentation. The record of proceedings, however, does not show that his presentations have been frequently cited by other researchers or have otherwise 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.

In addition, the record contains evidence of the Petitioner's three patents issued by the U.S. Patent and Trademark Office, and that his patent, ' was cited three times by others in their patents. The Petitioner presented evidence of two patents from other inventors who cited to his patent. A review of those patents does not indicate that the Petitioner's original findings were instrumental to the inventors in developing their patents. Rather, the inventors credited the Petitioner for his original work. In general, a patent recognizes the originality of the idea, but it does not demonstrate that the Petitioner made a contribution of major significance in the field. Overall, the record does not demonstrate that the three citations of one of the Petitioner's patents reflect a contribution of major significance.

On appeal, the Petitioner contends that his computer research has had "international significance" and provides a letter from senior research scientist at describes the Petitioner's discovery for using the modeling. She also indicates that the Petitioner's work in this area "will achieve significantly better improvements," "is ready to be released," and "will be a landmark milestone in the progress of [concurrent collections] modeling." A petitioner cannot establish eligibility under this criterion based on the expectation of future significance. Given the descriptions in terms 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).

The Petitioner also references a letter from assistant professor at as evidence of the impact of his work on the field. Although indicated that his team is utilizing some of the Petitioner's concepts at his school, he did not indicate or describe how his work has widely impacted the field, so as to demonstrate original contributions of major significance. *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).

The record also contains other recommendation letters from the Petitioner's peers. Although the letters praise his 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 establish that he has made original contributions of major significance. Instead, the letters reference the importance of the Petitioner's works as indicated by their publication in professional journals and presentation at conferences. As discussed above, the Petitioner has not shown through his citation history or other evidence that his contributions have been of major significance in the field. Again, while the

selection of the Petitioner's articles in professional journals or at conference proceedings verifies the originality of his work, it does not necessarily reflect that his research is considered of major significance.

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 in the field. *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 those 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 scholarly articles in professional 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).

On appeal, the Petitioner contends that he meets this criterion based on his role as a post-doctoral computer scientist at and he references a letter from for stated that the Petitioner "provides critical research for projects related to fault tolerance and resilience." In addition, indicated that the Petitioner "is working on developing programming abstractions to the application developers and domain scientists. . . ."

In general, a leading role is evidenced from the role itself. Here, the Petitioner serves as a post-doctoralcomputer scientist. letter, however, does not indicate whether the Petitioner served in a leading role for the organization or where his position fit in the overall hierarchy of Based on the Petitioner's position title and the lack of details contained in letter, the Petitioner has not shown that he performed in a leading role for

Furthermore, a critical role is one in which a petitioner was responsible for the success or standing of the organization or establishment. Although [redacted] stated that the Petitioner has "completed original research" and briefly describes his current projects, he did not show how the Petitioner's accomplishments impacted [redacted] standing in the field. For instance, there is no evidence reflecting that [redacted] garnered attention based on the Petitioner's work. Accordingly, the Petitioner has not established that he performed in a critical role for [redacted] For these reasons, the Petitioner has not met his burden of demonstrating that he meets this criterion.

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).

On appeal, the Petitioner does not address the Director's finding that he did not meet this criterion or submit documentary evidence. Although the Petitioner submitted job offer letters with salaries for positions as a post-doctoral research staff member, post-doctoral appointee, and computer scientist, he did not provide sufficient evidence comparing his salary to others in his field. As such, he did not demonstrate that he received a high salary in relation to others as required by this regulatory criterion. Accordingly, the record does not show that he meets this criterion.

B. Summary

As explained above, the record only satisfies 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). 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.

III. CONCLUSION

For the above stated reasons, the Petitioner has not met his 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).

ORDER: The appeal is dismissed.

Cite as *Matter of M-K-E-*, ID# 119789 (AAO Dec. 21, 2016)