U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF H-S-F-

DATE: MAR. 1, 2016

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, an engineer, 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). This classification 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, Nebraska Service Center, denied the petition. 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 necessitates either 1) documentation of a one-time major achievement, or 2) materials that meet at least three of ten regulatory criteria listed under 8 C.F.R. § 204.5(h)(3)(i)-(x).

The matter is now before us on appeal. In his appeal, the Petitioner submits additional evidence, and asserts that the Director erred in concluding he did not meet the original contributions of major significance criterion under 8 C.F.R. § 204.5(h)(3)(v). In addition, he states that he has risen to the very top in the field of control theory, "an interdisciplinary branch of engineering and mathematics," and dynamic systems, a concept that "has its origins in Newtonian mechanics," and that he has sustained national or international acclaim through his work in the field.

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

I. LAW

The Petitioner may demonstrate his extraordinary ability through sustained national or international acclaim and achievements that have been recognized in his field through extensive documentation. Specifically, section 203(b)(1)(A) of the Act states, in pertinent part, that:

> Aliens with extraordinary ability. -- An alien is described in this subparagraph if –
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> (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 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 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 he must provide sufficient qualifying evidence that 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 the proper application of *Kazarian* by U.S. Citizenship and Immigration Services (USCIS)), *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").

II. ANALYSIS

The record supports the Director's findings that the Petitioner meets the participation as a judge criterion under 8 C.F.R. § 204.5(h)(3)(iv), and the authorship of scholarly articles criterion under 8 C.F.R. § 204.5(h)(3)(vi). Although the Petitioner has documented the originality of his research and shown some impact in the field, we have concerns about the level of significance in the field. Ultimately, in a final merits determination, we conclude that the Petitioner has not established his eligibility for the classification sought. Specifically, he has not demonstrated sustained national or international acclaim or submitted extensive evidence confirming that his achievements have been recognized in the field. Accordingly, we will dismiss the appeal.

A. Evidentiary Criteria[1]

Under the regulation at 8 C.F.R. § 204.5(h)(3), the Petitioner, as initial evidence, may present a one-time achievement that is a major, internationally recognized award. In this case, the Petitioner has not asserted or shown that he is the recipient of a qualifying award at a level similar to that of the Nobel Prize. As such, he must provide at least three of the ten types of documentation listed under 8 C.F.R. § 204.5(h)(3)(i)-(x), or file comparable evidence establishing his eligibility under 8 C.F.R. § 204.5(h)(4), to meet the basic eligibility requirements. As acknowledged by the Director, the Petitioner's peer review of manuscripts for publication and authorship of scholarly articles meet the criteria at 8 C.F.R § 204.5(h)(3)(iv) and (vi).

The Director concluded that the Petitioner did not submit sufficient documentation to show that he met the nationally or internationally recognized prizes or awards criterion under 8 C.F.R. § 204.5(h)(3)(i), or the published materials about the Petitioner criterion under 8 C.F.R. § 204.5(h)(3)(iii). The Director also found that the Petitioner did not file qualifying comparable evidence demonstrating his eligibility under 8 C.F.R. § 204.5(h)(4). On appeal, the Petitioner has not specifically challenged those findings. Accordingly, he has abandoned these issues, as he did not timely raise them on appeal. *Sepulveda v. United States 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 United States District Court found the plaintiff's claims to be abandoned as he failed to raise them on appeal). On appeal, as relating to the criteria listed under 8 C.F.R. § 204.5(h)(3)(i)-(x), the Petitioner challenges only the Director's finding on the original contributions of major significance criterion.

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

The Petitioner asserts that he meets this criterion, because of his patent entitled [redacted] his authorship of scientific materials, his participation in conferences, other scientists' citations to his written work, his involvement in research projects, and reference letters that discussed his contributions in the field.

To meet this criterion, a petitioner's contributions must be both original and of major significance in the field. 8 C.F.R. § 204.5(h)(3)(v). The term "original" and the phrase "major significance" are not superfluous and, thus, they have some meaning. *Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F. 3d 28, 31 (3d Cir. 1995) (quoted in *APWU v. Potter*, 343 F.3d 619, 626 (2d Cir. 2003)). The plain language of the criterion dictates that a petitioner's contributions must be original, such that he is the first person or one of the first people to have done the research in the field, and that his contributions must be of major significance in the field, such that his work significantly advanced or impacted the field as a whole. Regardless of the field, the phrase "contributions of major

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

significance in the field" requires substantiated impacts beyond one's collaborators, employer, clients or customers. *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 demonstrate her impact in the field as a whole). In addition, it is insufficient to document one's potential influence; rather, the criterion requires a showing that a petitioner's scientific findings have already significantly impacted the field. *See id.* at 134-36.

While the Petitioner has shown the original research he performed on projects with major funding from U.S. government sources has had some impact in the field, we question the level of significance in the field. As this issue relates to the quality of the evidence, however, we prefer, in this case, to address it in the final merits determination. As discussed below, we will consider the record as a whole to determine whether the Petitioner has demonstrated he is an individual of extraordinary ability.

B. Final Merits Determination

In the final merits determination, we consider the totality of the record to determine if a petitioner has demonstrated, by a preponderance of the evidence, that he has sustained national or international acclaim,[2] and that his achievements have been recognized in the field through extensive documentation,[3] making him one of the small percentage who have risen to the very top of the field of endeavor. If so, a petitioner has met the requisite burden of proof and established eligibility for visa classification as an individual of "extraordinary ability." *See* § 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20.

The documents we consider in the final merits analysis may include achievements that were not directly applicable to one of the criteria listed under 8 C.F.R. § 204.5(h)(3)(i)-(x), and comparable evidence under 8 C.F.R. § 204.5(h)(4). Also, a petitioner may request that submissions that do not meet any of the enumerated criteria, and do not qualify as comparable, be considered within a final merits analysis. In a final merits analysis, we first discuss and analyze the foreign national's accomplishments to provide a framework to perform an overall, final determination. We then weigh all of the filings together to determine if his successes are sufficient to demonstrate that he has extraordinary ability in the respective field of endeavor. *See* § 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at1119-20.

In this case, the Petitioner's judging experience does not exhibit national or international acclaim, nor does it reveal a high level of recognition in his field. *See* 8 C.F.R. § 204.5(h)(3)(iv). On appeal, the

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[2] "Sustained" means to support or maintain, especially over a long period. *Black's Law Dictionary* 1585 (9th ed. 2009). Therefore, the foreign national must have maintained the national or international acclaim over a period of time through the date of filing to demonstrate his eligibility.

[3] While the statute requires extensive documentation, eligibility is to be determined not by the quantity of the filings alone but by their quality. *Chawathe*, 25 I&N Dec. at 376 (citing *Matter of E-M-*, 20 I&N Dec. 77, 80 (Comm'r 1989)). We "examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence." *Id.*

Petitioner maintains that he has served as a peer reviewer for 13 journals and conferences. The record does not support this assertion. In his initial filing, the Petitioner submitted email correspondence inviting him to serve as a reviewer for conferences and publications, such as the

The correspondence confirmed that the Petitioner reviewed three articles:

In his letter, a professor at the verified that the Petitioner reviewed three scientific papers, noting that he was impressed with the Petitioner's review capability.

In addition to these three articles, the Petitioner maintained in his initial filing, specifically in his curriculum vitae, that he had served as a reviewer for other articles, journals and conferences. The record does not support this assertion. The Petitioner submitted authors' responses to reviewers' comments and scholarly articles that he indicated he had reviewed. The materials, however, do not specify who reviewed these articles. The record does not verify that the Petitioner has reviewed articles in addition to the three referenced above, or that he has accepted all invitations to serve as a peer reviewer. Similarly, although he provided in his curriculum vitae that he was an editor for and a reviewer for other journals and conferences, he did not substantiate his associations with these publications or organizations.

The nature of a petitioner's judging experience is a relevant consideration as to whether he has sustained national or international acclaim. *See Kazarian*, 596 F.3d at 1122. Examples that might set a petitioner apart from others in his field include evidence that he has received and completed independent requests for review from a substantial number of journals or conferences, served in editorial positions for distinguished journals, and/or chaired technical committees for reputable conferences. *See* 8 C.F.R. § 204.5(h)(2). The Petitioner has not shown that reviewing three articles is indicative of his national or international acclaim in the field. Peer review is a routine element of the process by which scientific journals select articles for publication. An individual's participation in this process, in this case, reviewing three articles for two publications, does not confirm that he has sustained national or international acclaim or that he is at the very top of his field. Multiple other scientists who have provided reference letters for the Petitioner are editors, are on the editorial board, or have performed peer review for a dozen or more scientific journals. For example, a professor in the reviewed manuscripts for more than 21 international journals, was an associate editor for several

publications, and reviewed proposals for the and other governmental agencies. a professor in the peer reviewed over 2,000 articles and was an associate editor for various journals. The Petitioner's limited peer review and judging experience is not commensurate with one who is within the top percentage in his field.

Moreover, although the Petitioner has engaged in original work that has had some influence in the field, he has not shown that the impact of his research has resulted in national or international acclaim or recognition. When he was a Ph.D. candidate, the Petitioner worked as a graduate research assistant at laboratory and was involved in projects that the funded. One of the projects studied which "are complex physical systems controlled by means of emerging technologies such [as] sensor and communication networks." explained that the Petitioner "derive[d] a novel class of low-complexity and economic algorithms that can overcome the problems associated with the security implementation of time-triggered control methods." Another project stated that the Petitioner "solve[d] a problem of particular interest that ensures the functionality of an oscillator network despite presence of switching interactions among them." She provided that the research shed "new light on the robustness event triggered control of highly complex synchronization dynamics," and "can help assess the limitation of time-triggered controlled methodologies for the A third project dealt with power maximization in a noted that the Petitioner supervised a Master of Science (MS) student's thesis, which offered a result with "real-world" applicability. Although verified that these projects and the Petitioner's findings have "real world applications of crucial strategic interest," she did not specify how his results were being used or considered for use or have garnered him national or international acclaim in the field.

The record shows that the Petitioner was a research intern at the and the in Switzerland. Since obtaining his Ph.D. degree, he has worked with a professor in the and President of to develop "unique, more cost effective solutions for water filtration and purification for commercial and residential applications."

The Petitioner and several of his references asserted that his contributions are significant because they led to the publication of scholarly articles, conference papers and technical papers, and participation and presentation in conferences. Publication and presentation illustrate that the research is original and worthy of dissemination in the field. To demonstrate impact, the Petitioner must submit evidence on the field's reaction after dissemination. The Petitioner has not shown that there has been wide acceptance or implementation of his research findings in the field, or that many scientists in the field have relied on his research findings in their own studies or that they have deemed his studies as crucial in their own projects.

Similarly, while the Petitioner's patent application might prove the originality of his idea, it does not illustrate that he has made a contribution of major significance or has had a high level of influence in the field through the development of his idea. The record lacks information that the Petitioner's patent has been broadly utilized in or significantly impacted the field. While the reference letters, from people who have worked with the Petitioner, confirmed that his research is original and contributes to the general pool of knowledge, the letters do not establish that his impact in the field has garnered him national or international acclaim.

In addition, the record does not indicate that many people in the field, beyond those who have collaborated directly with the Petitioner, know and are familiar with the Petitioner or his research. In his letter, who is the Petitioner's employer, explained he and the Petitioner conducted research "to develop a residential and commercial water quality monitoring and control system." The record lacks proof that any individual, company or government entity has used the system, or that the Petitioner has sustained acclaim through this research. In addition, although the Petitioner has been involved with projects funded by the and the U.S. military, the funding was awarded to and her laboratory, not specifically to the Petitioner. The Petitioner's association with these research grants was due to his employment at laboratory.

Also, the Petitioner has not demonstrated that he is an established figure in the field. Rather, many reference letters noted that he has the potential and the capability to one day become an influential scientist in the field. For example, , an associate professor in the said that the Petitioner "has the potential to achieve wide impact across multiple application domains" and that his research "will have significant impact both in the controls-engineering domain and in its application to cyber-physical systems." similarly stated that the Petitioner's "continued contribution . . . will provide a substantial benefit to the United States," and indicated that the Petitioner holds "very high promises as a rising star in the future." To meet the eligibility for this classification, the documentation must reflect that at the time of filing the petition, the Petitioner has already reached the very top of his field. The Petitioner has not made such a showing.

On appeal, the Petitioner cites *Matter of Skirball Cultural Center*, 25 I&N Dec. 799 (AAO 2012), asserting that "once the credentials and consistency of the expert have been established, his or her testimony regarding the beneficiary and his or her contributions to the field is to be granted substantial deference." *Skirball Cultural Center* involved a P-3 nonimmigrant petition that sought to classify a beneficiary as an entertainer in a culturally unique program. *See* § 101(a)(15)(P)(iii) of the Act. A P-3 nonimmigrant petition is governed by statutory and regulatory requirements that are distinct from those relevant to the instant immigrant petition. Specifically, the regulation at 8 C.F.R. § 214.2(p)(6)(ii)(A), which relates to P-3 nonimmigrant cases, expressly lists expert letters as qualifying documentation that can demonstrate eligibility. This regulation, however, does not apply to the immigrant visa classification that the Petitioner seeks here. Ultimately, we may, as this decision has done above, evaluate the content of the expert letters to determine if they support the Petitioner's eligibility. *See Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r 1988); *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").

Furthermore, although the Petitioner meets the scholarly articles criterion at 8 C.F.R § 204.5(h)(3)(vi) through his journal articles and conference papers, and has authored technical papers and a book chapter, his writing does not demonstrate his national or international acclaim or a high level of recognition in his field. Authoring scholarly articles is inherent within a scientific researcher's occupation. We may consider the field's response to the articles in a final merits determination. *Kazarian*, 596 F.3d at 1122. As such, the Petitioner's citation history may be a factor in evaluating his publication record. According to the initial filing, he had coauthored 10 journal articles, some of them were published, while others were under review for publication. The Petitioner provided search results, reflecting that each of his published articles had garnered five or fewer citations. On appeal, the Petitioner indicates that he had coauthored one book chapter, three peer-reviewed journal articles, and five conference papers and proceedings. He submits additional search printouts, revealing that the citation frequency to his published work has remained unchanged during this proceeding.

On appeal, the Petitioner asserts that his articles have been cited 92 times by scientists and researchers. In a footnote, he indicates that due to "a bug," did not pull citations from and, thus, only shows 27 citations. The Petitioner has not submitted evidence in support of these statements, such as citations that appear on and information about that website. While the Petitioner also provided citations registered on other websites, and , these sources include no additional cites than the ones from . Going on record without supporting documentation is not sufficient for the purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Assoc. Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). The printouts do not verify 92 or 27 citations to the Petitioner's work. Of the multiple articles referenced in the printouts, only some listed the Petitioner as an author, and none of those articles received more than five citations. The Petitioner coauthored his most cited article, confirms that the article is available on and has garnered five citations as of June 2015.[4] The Petitioner files noting that the average citation per paper in the engineering field, over a ten-year period, is 5.37. The Petitioner has not established that the citation frequency of his most cited article, which received five citations, is indicative of his national or international acclaim, or that the impact of this article is significantly higher than that of other published engineering papers.

The Petitioner also coauthored a chapter with for the book published by the explained that he included the chapter in the book, because the peer reviewers of the chapter "were all strongly impressed by the significance and thoroughness of the work." The publication of the book chapter, thus, appears to be similar to the publication of a peer reviewed article. Its publication signifies that the material has value in the field, but as the record lacks information on who has read the book chapter since publication, or what impact

[4] On appeal, the Petitioner indicates that an article with the same title has been submitted to for publication consideration.

it has had in the field, the Petitioner has not demonstrated that he achieved national or international acclaim through its publication.

In light of the above, the Petitioner's accomplishments in the aggregate include his participation in the widespread peer review process utilized by scientific journals, his original findings that have practical applications, and his authorship of both scholarly articles and technical reports. These achievements confirm that he is an experienced engineer who has worked on government funded projects and gained the respect of his circle of colleagues. They do not, however, demonstrate that he has sustained national or international acclaim or that he is one of the small percentage at the very top of his field.

C. Summary

In summary, the full measure of the Petitioner's accomplishments, including his educational background, ability and achievements, the level of his national or international acclaim and the extent to which his achievements have been recognized in the field, are not indicative of a record of sustained acclaim. Also, he has not submitted extensive documentation exhibiting that he has attained a level of expertise placing him among that small percentage who have risen to the very top of the field of endeavor.

III. CONCLUSION

The Petitioner has not demonstrated by a preponderance of the evidence that he is an individual of extraordinary ability. 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 filings do not prove that the Petitioner's achievements set him significantly above almost all others in his field at a national or international level. The Petitioner, therefore, has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. The burden is on the Petitioner to show eligibility for the immigration benefit sought. § 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). The Petitioner in this case has not established that he is an individual of extraordinary ability.

ORDER: The appeal is dismissed.

Cite as *Matter of H-S-F-*, ID# 15698 (AAO Mar. 1, 2016)