U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF C-V-, INC.

DATE: MAR. 14, 2016

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a poultry breeding company, seeks to classify the Beneficiary, a statistical geneticist, 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, Texas 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 the Beneficiary's one-time major achievement, or 2) materials that show the Beneficiary meets 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 argues that the Director erred in concluding the Beneficiary did not meet the original contributions of major significance criterion under 8 C.F.R. § 204.5(h)(3)(v), and the high salary or other significantly high remuneration criterion under 8 C.F.R. § 204.5(h)(3)(ix). In addition, the Petitioner maintains that the Beneficiary is an individual of extraordinary ability.

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

I. LAW

The Petitioner may establish the Beneficiary's eligibility by demonstrating his extraordinary ability through sustained national or international acclaim and achievements that have been recognized in the field through extensive documentation. 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 –
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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 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 the beneficiary 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").

II. ANALYSIS

A. Prior O-1 Visa Petitions

While USCIS has approved at least one O-1 nonimmigrant visa petition filed on behalf of the Beneficiary, the prior approval does not preclude USCIS from denying an immigrant visa petition based on a different, if similarly phrased, standard. Sometimes I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. United States Dep't of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Bros. Co. Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989). We are not required to approve applications or petitions where eligibility has not been demonstrated. *See, e.g., Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 597 (Comm'r 1988). Furthermore, our authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved a nonimmigrant petition on behalf of a beneficiary,

we would not be bound to follow the decision, if eligibility has not been established. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 at *3 (E.D. La. Mar. 15, 2000), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 534 U.S. 819 (2001).

B. Evidentiary Criteria

Under the regulation at 8 C.F.R. § 204.5(h)(3), the Petitioner, as initial evidence, may present the Beneficiary's one-time achievement that is a major, internationally recognized award. In this case, the Petitioner has not stated or shown that the Beneficiary is the recipient of a qualifying award at a level similar to that of the Nobel Prize. As such, it must provide at least three of the ten types of documentation listed under 8 C.F.R. § 204.5(h)(3)(i)-(x) to meet the basic eligibility requirements.

The Director concluded that the Petitioner met the authorship of scholarly articles criterion under 8 C.F.R. § 204.5(h)(3)(vi). The record supports this finding. The Petitioner demonstrated that the Beneficiary published a number of papers, including a article, entitled a article, entitled ; and a entitled ."

On appeal, the Petitioner specifically challenges the Director's findings relating to two criteria, the original contributions of major significance criterion under 8 C.F.R. § 204.5(h)(3)(v), and the high salary and other significantly high remuneration criterion under 8 C.F.R. § 204.5(h)(3)(ix). As the Petitioner has not argued that the Director erred in regard to, or continued to maintain that the Beneficiary meets, other enumerated criteria, the Petitioner has abandoned these issues. *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 positions to be abandoned as he failed to raise them on appeal).

Moreover, although in its initial filing and response to the Director's request for evidence (RFE), the Petitioner discussed the awards and prizes criterion, the membership in associations criterion, the published material criterion, the participation as a judge criterion, and the leading and critical role criterion under 8 C.F.R. § 204.5(h)(3)(i), (ii), (iii), (iv) and (viii), the submissions do not support a finding that the Beneficiary meets these requirements. Specifically, the documents do not demonstrate that the Beneficiary has received a nationally or internationally recognized prize or award, has been a member of an association that requires outstanding achievements, has been featured in qualifying publications, has actually judged the work of others in his or an allied field, or has performed in a leading or critical role for an organization with a distinguished reputation. While the Beneficiary has performed an important role for his employer, the Petitioner, the record does not substantiate the Petitioner's distinguished reputation. *See* 8 C.F.R. § 204.5(h)(3)(viii). Accordingly, had the Petitioner not abandoned these issues on appeal, we would conclude that the Beneficiary did

not meet any of the abovementioned criterion. We now turn to the criteria at issue on appeal. For the reasons discussed below, the Petitioner has not demonstrated that the Beneficiary meets either of those criteria.

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

On appeal, relying on a letter from , a professor at the Department of Animal Sciences, the Petitioner maintains that the Beneficiary meets this criterion. To satisfy this criterion, a beneficiary'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)). Regardless of the field, the phrase "contributions of major significance in the field" requires substantiated impacts beyond one's 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).

According to the Beneficiary is one of the Petitioner's geneticists, and he is responsible for DNA sequence analyses of the Petitioner's pureline genetic chickens. indicated that the Beneficiary "has developed several methods that have provided significant contribution to our understanding of genetics and at great benefit to [the Petitioner]." Specifically, the Beneficiary has "developed a method of imputation that saves [the Petitioner] millions of dollars by increasing the accuracy of chicken selection"; has "developed a method for next generation sequencing data that can detect the causative mutation for chicken disease and eliminate the disease very quickly"; and has "developed a state of the art tool to identify Salmonella strains that cause great loses to the chicken industry and a significant risk to the food industry."

In support of his statement that the Beneficiary's work "has made significant contributions to DNA research," noted that the Petitioner "has authored 16 scholarly articles," has "presented his findings at numerous national and international meetings," has been invited to "participate in major sessions in international meetings," and has been "invited to teach two separate courses at to professors and PhD research scientists." also provided that the Petitioner "has shown the skill and intelligence to implement new techniques in order to make this program [a] success for [the Petitioner]."

The record includes additional reference letters. According to the Beneficiary's supervisor, who is the Petitioner's Director of Genomics and Quantitative Genetics, the Beneficiary's "research has contributed original and significant gains toward genetic improvement of [the Petitioner's] commercial chicken lines." Specifically, the Beneficiary's work has led to chickens that are "55 grams heavier, have 0.30% more breast meat on the carcass, lay one additional egg, and need 1.2% less feed to reach these improved performance figures." offered an identical

assessment as [redacted] noting that the Beneficiary "has shown the skill and intelligence to implement new techniques in order to make this program [a] success for [the Petitioner]."[1]

While the record documents the Beneficiary's contributions to his employer, the plain language of the criterion requires a showing of contributions to the field, which extends beyond the Petitioner. As discussed in *Visinscaia*, the court agreed with our finding that "the regulatory requirement that the petitioner demonstrate the 'major significance' of any original contributions means that the petitioner's work must significantly affect her field of endeavor." 4 F. Supp. 3d at 134. The court further observed that without "specific evidence" that a petitioner's techniques had been adopted in the field, we correctly found that she did not meet this criterion. *Id.* at 134-35. Here, the Petitioner has not illustrated that the Beneficiary's contributions reached beyond his employer. The filings lack information verifying that there is a wide acceptance or adoption of the Beneficiary methods in the field, or that other companies and/or scientists, not associated with the Petitioner, have relied on the Beneficiary's findings in their own projects. Even assuming the Beneficiary's results are proprietary to his employer, the Petitioner has not confirmed that the Beneficiary's solutions have set a standard noted in the industry and to which the Petitioner's competitors aspire. Without proof that the Beneficiary has impacted the field as a whole, at a level consistent with contributions of major significance, the Petitioner has not satisfied this criterion.

The record verifies the Beneficiary's authorship of scholarly articles and presentation of research findings. The regulations contain a separate criterion on the authorship of published materials. *See* 8 C.F.R. § 204.5(h)(3)(vi). As discussed above, the Beneficiary has met the authorship criterion. Publication and presentations denote that the Beneficiary's work has been disseminated in the field. To meet the contributions criterion, the Petitioner must also show impact in the field after dissemination. *See Kazarian* v. USCIS, 580 F.3d 1030, 1036 (9th Cir. 2009), *aff'd in part*, 596 F.3d 1115, 1122 (9th Cir. 2010). In this case, while the evidence confirms that the Beneficiary's research is original and contributes to the pool of general knowledge in the field, it does not establish that his impact in the field has risen to a level consistent with contributions of major significance. The Petitioner submitted a 2011 article, entitled [redacted] that cited the Beneficiary's 2009 article among over 40 other sources. In response to the Director's RFE, the Petitioner maintained that other published papers had also cited the Beneficiary's articles. The Petitioner, however, has not corroboration this information. Unsubstantiated statements are 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 Petitioner has not proven that the limited citation frequency is indicative of the Beneficiary's impact in the field at a level consistent with a finding of "major significance."

The Petitioner has submitted letters initially written to support an O-1 nonimmigrant visa petition filed on behalf of the Beneficiary. These letters are from [redacted] a professor at the Departments of Animal Sciences and Molecular Evolutionary Genetics, [redacted].

[1] The letters from [redacted] included multiple identical passages and paragraphs.

a research geneticist at in the Netherlands; and who is employed at the Department of Genetic Evaluation and Biometrics at [2] While both affirmed that the Beneficiary has made qualifying contributions, their discussions are conclusory. Specifically, maintained that the Beneficiary's results have "been implemented in both livestock genomics and human genomics, influencing a large section of genetics and genomics scientific field," but did not offer an example of a research team using the Beneficiary's findings. Similarly, stated that the Beneficiary's "computational methodologies are widely used toward the selection of superior breeding stock" without identifying an independent group that has adopted these methodologies. praised the Beneficiary's work at but did not indicate the Beneficiary's influence there extended beyond that company. The written support provided information on the Beneficiary's academic and professional achievements, but did not include specific examples of how his research has impacted the field as a whole, or that the impact is of "major significance" in the field. While the Beneficiary has engaged in genetic research, at issue is whether there is specific documentation corroborating his impact in the field as a whole. The Petitioner has not made such a showing.

Solicited letters that do not specifically identify contributions or include specific examples of how those contributions influenced the field as a whole are insufficient to meet this criterion.[3] *Kazarian*, 580 F.3d at 1036. The opinions of experts in the field are not without weight and have been considered above. USCIS may, in its discretion, use as advisory opinions statements offered as expert testimony. *See Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, USCIS is ultimately responsible for making the final determination regarding a foreign national's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive proof of eligibility; USCIS may, as this decision has done above, evaluate the content of those letters as to whether they support the foreign national's eligibility. *See id.* at 795; *see also 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"). USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Caron Int'l*, 19 I&N Dec. at 795; *see also Visinscaia*, 4 F. Supp. 3d at 134-35 (upholding our decision to give minimal weight to solicited letters from colleagues or associates that do not provide details on contributions of major significance in the field).

In this case, while the record establishes the Beneficiary's value to the Petitioner, it lacks specific evidence showing the Beneficiary's influence beyond his employer. The submissions do not demonstrate his impact in the field as a whole, at a level consistent with a finding of "major significance in the field." Accordingly, the Petitioner has not satisfied this criterion.

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[2] The letters from included multiple verbatim passages. For example, the concluding paragraphs, in which the authors provided a summary assessment of the Beneficiary's qualifications, are identical.

[3] In 2010, the *Kazarian* court reiterated that our conclusion that "letters from physics professors attesting to [the self-petitioner's] contributions in the field" were insufficient was "consistent with the relevant regulatory language." 596 F.3d at 1122.

> *Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.*

On appeal, the Petitioner maintains that the Beneficiary meets this criterion because his "salary placed him several standard deviations above the normal or somewhere in the top 1-5% of geneticists." The record does not support this statement. Specifically, the Petitioner has not submitted sufficient evidence demonstrating what constitutes "high salary" or "other significantly high remuneration" in the field nationally. As the plain language of this criterion requires a comparison in earning between the Beneficiary and others in his field, to meet this criterion, the Petitioner must provide information relating to other research scientists' income, including senior scientists and principal research scientists. *See* 8 C.F.R. § 204.5(h)(3)(ix).

In a December 2014 letter, the Petitioner's Director of Human Resources, affirmed that the Petitioner will pay the Beneficiary an annual salary of $112,915. The Beneficiary's Statements of Earnings and Deductions reflected that as a statistical geneticist, he received between $4,447.34 and $4,527.88 in "Reg Pay Salary" biweekly from January 4 through April 11, 2015. The Petitioner filed a number of online printouts, such as those from indeed.com, payscale.com, glassdoor.com, and flcdatacenter.com, relating to research scientists' salary. The record, however, lacks specific information showing what constitutes "high salary" or "other significantly high remuneration" nationally. Most of the salary information is restricted to , Arkansas, the Beneficiary's place of employment. The plain language of the criterion, "others in the field," necessitates a review of salary information of members of the field working outside of the Beneficiary's locality and with more experience, including senior scientists, who average $100,000 per year, and principal research scientists, who average $107,000 per year, according to the information from indeed.com. Furthermore, evidence that the Beneficiary's salary is higher than the average salary of other research scientists is insufficient to demonstrate his "high salary" or "significantly high remuneration." For the above reasons, the Petitioner has not satisfied this criterion.

C. Summary

The Beneficiary has been working as a geneticist for the Petitioner for a number of years. The reference letters stated in general terms that he has been capable and skillful at his position, and they demonstrated his importance to his employer. The record, however, does not establish that the Beneficiary meets at least three of the ten criteria listed under 8 C.F.R. § 204.5(h)(3)(i)-(x).

III. CONCLUSION

Had the Petitioner included the requisite material under at least three evidentiary categories, in accordance with the *Kazarian* opinion, our next step of analysis would be a final merits determination that considers all of the submissions in the context of whether the Beneficiary has achieved: (1) a "level of expertise indicating that [he] is one of that small percentage who have risen

to the very top of the field of endeavor," and (2) "that the [Petitioner] has sustained national or international acclaim" and that his "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. As the Petitioner has not done so, the proper conclusion is that it has not satisfied the antecedent regulatory requirement of presenting initial evidence set forth at 8 C.F.R. § 204.5(h)(3)(i)-(x). *See Kazarian*, 596 F.3d at 1122.

Nevertheless, although we need not provide the type of final merits determination referenced in *Kazarian*, a review of the record in the aggregate does not support a finding that the Beneficiary has achieved the level of expertise required for the classification. The Petitioner has not demonstrated by a preponderance of the evidence that the Beneficiary is an individual of extraordinary ability in the field of genetic research. A review of the submissions 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 the Beneficiary's 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. 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 C-V-, Inc.*, ID# 15906 (AAO Mar. 14, 2016)