U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF S-S-T-

DATE: OCT. 6, 2016

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a biotechnology 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 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, concluding that the Petitioner had not provided documentation satisfying the initial evidence requirements set forth at 8 C.F.R § 204.5(h)(3), which requires documentation of a one-time achievement or evidence that meets at least three of the ten regulatory criteria.

The matter is now before us on appeal. In his appeal, the Petitioner argues that he meets the awards criterion at 8 C.F.R § 204.5(h)(3)(i) and the original contributions of major significance criterion at 8 C.F.R § 204.5(h)(3)(v).

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

I. LAW

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

> 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,
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> (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 achievements in the field through a one-time achievement (that is a major, internationally recognized award). If he 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 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"). 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

A. Evidentiary Criteria

Under the regulation at 8 C.F.R. § 204.5(h)(3), the petitioner, as initial evidence, may document a one-time achievement that is a major, internationally recognized award. In this case, the Petitioner has not stated 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) to meet the basic eligibility requirements.

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

The Petitioner submitted a booklet from the U.S. [redacted] listing the 1996 through 2013 [redacted] recipients and describing their technologies. According to the booklet, "[e]ach winner demonstrates a commitment to designing, developing, and implementing a green chemical technology that is scientifically innovative, economically feasible, and less hazardous to human health and the environment. . . . [redacted] typically

honors five winners each year."[1] In 2013, the Petitioner's employer, received the Award. was recognized for devising "synthetic routes for the manufacture of that are only three steps in a single pot" and for implementing "these greener synthetic routes for the full-scale production of and their analogues" at the company's ' Texas manufacturing site." The plain language of this criterion, however, requires "the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field," and not just his employer. The record does not contain any evidence that the specifically identified the Petitioner as a Award recipient.

The Petitioner also provided a December 2013 memorandum from manufacturing leader at to – All Employees" indicating that "the Manufacturing facility [ ] received the 2013 Award." The memorandum congratulated the team's innovative work," but mentioned only senior manager of manufacturing at In addition, the Petitioner submitted photographs of and , vice president of manufacturing operations at (which recently acquired receiving the Award at a ceremony at the As evidence of his contribution to the award, the Petitioner offered letters of support from and indicating that he "validated" newly developed in the master mixes as part of the production process at the manufacturing facility.

The record also included three December 2013 news releases from announcing that the company's manufacturing facility had received the Award. One news release mentioned and chief sustainability officer at The Petitioner, however, was not identified in any of the three articles.

In addition , there is no documentary evidence showing that the Award is recognized at a level commensurate with a nationally or internationally recognized award for excellence in the field. We cannot conclude that news releases, which are not the result of independent media reportage, are reflective of the award's national or international recognition of excellence in the Petitioner's field.

The Petitioner also provided various recognition certificates that he received from but these awards from his employer reflect institutional recognition rather than nationally or internationally recognized awards for excellence in the field. There is no evidence demonstrating that the Petitioner's employee recognition certificates were recognized beyond his company on a national or international level.

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[1] In addition to honoring companies, a substantial number of the Awards recognized specific individuals.

In light of the above, the Petitioner has not established that he meets the requirements of 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.*

The Petitioner provided documentation of his peer review activities for and In addition, the record shows that the Petitioner served in editorial positions for and (a publisher of three scholarly journals). This evidence supports the Director's finding that the Petitioner meets this regulatory criterion.

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

The Petitioner offered various letters of support as evidence for this regulatory criterion. For instance, with respect to the Petitioner's agricultural research, an agricultural officer for the in India, described the Petitioner's work concerning the use of the bacteria pseudomonas fluorescence for controlling root knot nematodes (worms) in tomatoes and chilies. indicated that the Petitioner conceived "an innovative fermentation methodology to successfully develop [the bacteria] in huge numbers without the microbes losing their viability." In addition, noted that the Petitioner identified "the beneficial growth effects of the pseudomonas fluorescence" and how it helped tomatoes and chilies retain their flowers even in drastic conditions. He did not provide any specific examples of how the Petitioner's work has been widely utilized in farming operations or has otherwise been commensurate with original contributions of major significance in the field.

stated that the Petitioner's aforementioned findings were published in and With regard to the Petitioner's published work, the regulations contain a separate criterion concerning the authorship of scholarly articles in professional publications. 8 C.F.R. § 204.5(h)(3)(vi). Regardless, there is no presumption that every published article is a contribution of major significance in the field; rather, the Petitioner must document the actual impact of his work. A substantial number of favorable independent citations for an article is an indicator that others are familiar with the work and have been influenced by it. A less extensive citation record, on the other hand, is generally not suggestive of the work's impact in the field. In this instance, there is no documentary evidence showing that any of the Petitioner's published articles have been frequently cited by independent researchers or have otherwise been of major significance to the field.

Regarding the Petitioner's work for the textile industry, managing director of a fabric processing operation in India, indicated that in the 1990s, the Petitioner supplied his company with enzymes for garment mercerization. In addition, stated: "The

cellulase enzyme developed by [the Petitioner] was efficient in removing the loose protruding fibers and prevent [*sic*] further pilling formation." also noted that the Petitioner's nutrient and fermentation methodology allowed his company "to carry out the biopolishing process with varying temperatures." There is no evidence showing that any other companies have utilized the Petitioner's cellulase enzyme, or nutrient and fermentation methodology at a level indicative of contributions of major significance in the field. Lastly, indicated that the Petitioner published his work in but there is no documentation demonstrating that his findings have garnered a significant number of independent citations, that his original methodologies or garment mercerization enzyme have substantially altered practices in the fabric processing industry, or that his work otherwise constitutes contributions of major significance in the field.

On appeal, the Petitioner argues that "letters from the executives" at indicate "the magnitude of influence" that his work has had on the field. For example, former vice president of global manufacturing, described the Petitioner's management of projects involving the transfer of the company's new biotechnology products from research and development to manufacturing. noted that the Petitioner validated newly synthesized for reagents used in the assay of and helped implement re-engineered manufacturing process. Similarly, stated that the Petitioner worked on "validating an innovative manufacturing process for called and that he "was tasked with the responsibility of validating these newly developed in the Master Mixes." added that the Petitioner's characterization of "these in Master Mix [was] crucial for successfully integrating the new in the upstream process flow." Lastly, explained that the Petitioner's "work in planning and executing the validation of in the Master Mixes is essential for [ ] delivering the research tools for identifying the molecular mechanism of cells." Nonetheless, there is no documentary evidence demonstrating that the Petitioner's original work has affected the field beyond such that it constitutes a scientific contribution of major significance in the field.

and also discussed how the Petitioner worked to help meet demand for reagents used to identify animal H1N1 (influenza virus). For instance, stated: "Huge demand warranted a significant increase in production . . . . implemented a scale up process; [the Petitioner] identified the required tools and equipment, optimized for fast turnout of batches with high quality. This helped to ramp up the manufacturing of reagents . . . ." Although the Petitioner's actions helped boost his company's production of the H1N1 reagents, there is no documentary evidence reflecting that his specific contribution to the project was original and of major significance in the field.

With regard to the Petitioner's work for the plain language of this regulatory criterion requires that his original contributions be "of major significance in the field" rather than just to his employer and its customers. The record reflects that the Petitioner has validated new products created by research and development component, and worked to expand the company's manufacturing of reagents for identifying H1N1 and of newly synthesized used in the assay of DNA. While the Petitioner did not provide citation counts for any articles he

authored as part of his research projects with he offered search results for the company's test kit products: and The Petitioner points to the aforementioned online search results and contends that his work for has been "cited widely" and "used by numerous researchers to conduct their work." There is no intellectual property documentation showing, however, that the Petitioner was the inventor of the aforementioned products or their underlying technologies. Although the Petitioner's involvement in the manufacturing process was valuable to there is no evidence demonstrating that his own processing methods, patented innovations, or other original contributions have affected the biotechnology industry in a substantial way or have otherwise risen to the level of original scientific contributions of major significance in the field.

The Petitioner maintains that received the Award based on his planning and execution of the project to manufacture newly synthesized We addressed this award under the awards criterion at 8 C.F.R. § 204.5(h)(3)(i). Evidence relating to or even meeting the awards criterion is not presumptive evidence that the Petitioner also meets this criterion. Because separate criteria exist for awards and original contributions of major significance in the field, USCIS does not view the two as being interchangeable. To hold otherwise would render meaningless the regulatory requirement that a petitioner meet at least three separate criteria. Regardless, the Petitioner has not shown that the Award recognizing is indicative of his original contributions of major significance in the field. Furthermore, while the aforementioned award may recognize "a commitment to designing, developing, and implementing a green chemical technology that is scientifically innovative, economically feasible, and less hazardous to human health and the environment," there is no evidence demonstrating that the award was presented for an original scientific contribution of major significance in the field.

The Petitioner states that "the work and significance of an individual whose contributions are not published and hence not cited" in other scientists' work should not be overlooked. The plain language of this criterion requires "[e]vidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions" that are "of major significance in the field." Regardless of one's publication record or citation counts, the evidence must be reviewed to see whether it rises to the level of original scientific contributions "of major significance in the field." 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). In the present matter, the letters of support and other documentation of record do not show that the Petitioner's original work has influenced the field at a level indicative of contributions of major significance.

The Petitioner submitted letters of varying probative value. We have addressed the specific affirmations above. Generalized conclusory statements that do not identify specific contributions or their impact in the field have little probative value. *See 1756, Inc. v. U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990) (holding that an agency need not credit conclusory assertions in immigration benefits adjudications). In addition, uncorroborated statements are insufficient. *See Visinscaia*, 4

F.Supp.3d at 134-35; *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988) (holding that an agency "may, in its discretion, use as advisory opinions statements . . . submitted in evidence as expert testimony," but is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought and "is not required to accept or may give less weight" to evidence that is "in any way questionable"). The submission of reference letters supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the petitioner's eligibility. *Id. 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"). Without additional, specific evidence showing that the Petitioner's work has been unusually influential, has substantially affected the biotechnology industry, or has otherwise risen to the level of original contributions of major significance in the field, the Petitioner has not established that he meets this regulatory criterion.

> *Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.*

The Petitioner authored articles in professional publications such as and Accordingly, the record supports the Director's finding that the Petitioner meets this regulatory criterion.

B. Summary

For the reasons discussed above, we agree with the Director that the Petitioner has not submitted the required initial evidence of either a one-time achievement or documentation that meets at least three of the ten criteria listed at 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 he 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 he 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 Petitioner has achieved the level of expertise required for this classification. The Petitioner has not demonstrated by a preponderance of the evidence that he is an individual of extraordinary ability in the bioscience field. 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 eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The burden is on the petitioner to show 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 appeal is dismissed.

Cite as *Matter of S-S-T-*, ID# 11764 (AAO Oct. 6, 2016)