U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF B-M-

DATE: SEPT. 13, 2016

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a researcher and 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. The Director concluded 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 additional documentation and 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), *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 currently works as a researcher and scientist at the [redacted] primarily focusing on the identification of therapeutic treatments for stroke and neurodegenerative diseases. As the Petitioner has not indicated or 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). The Director found 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) 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) and submits additional documentation. We have reviewed all of the evidence in the record of proceedings, and the record does not support a finding that the Petitioner meets the plain language requirements of at least three criteria.

A. Evidentiary Criteria

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 of proceedings contains evidence reflecting that the Petitioner has reviewed articles for several journals, such as and 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).

The Petitioner contends that his research in intracerebral hemorrhage, Parkinson's Disease, and molecular biology represents original scientific contributions of major significance and points to his citation history. As evidence of the significance of his work, the Petitioner submitted documentation showing that his published articles garnered approximately 125 total independent citations. Specifically, other researchers cited the Petitioner's article approximately 46 times and his article approximately 37 times. The Petitioner's remaining articles were cited 10 times or less.

Generally, citations confirm that the field has taken some interest in a researcher's work. A review of the published works citing the Petitioner's work, however, reflects that his articles were not singled out at as particularly important to their own work; rather they were cited as background information and the authors credited the Petitioner for his original findings. 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.

Similarly, the Petitioner offers evidence of his presentations at various conferences, such as the 2014 and 2015 and the 2013 Participation in conferences demonstrates that his findings were shared with others and may be acknowledged as original contributions based on their selection for presentation. Although the Petitioner submits evidence of his best poster award at the 2015 the record of proceedings does not show that his presentations are 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 Petitioner contends that his work provides for designing, testing, and supporting important research in commercial products. The Petitioner submits screenshots from several companies, such as and Although the screenshots list some of the Petitioner's articles as references, he did not offer supporting evidence showing the extent of his work's contributions to their products. Moreover, the Petitioner did not establish how his research led to products that 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).

Further, the Petitioner submits evidence that he received a fellowship from the as part of his postdoctoral studies. The Petitioner did not demonstrate, however, that his fellowship resulted in original contributions of major significance in the field. While they may be prestigious, fellowships, scholarships, and other sources of competitive financial support are presented to students seeking to further their research, training, and experience.

As evidence under this criterion, the Petitioner also submitted letters that described the Petitioner's contributions in terms of future and potential impact.[1] For instance, professor at stated that the Petitioner's "work could lead to an important breakthrough in this field," and associate professor at the indicated that "[t]his breakthrough should lead to a new appreciation. . . ." 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).

On appeal, the Petitioner offers additional recommendation letters from his peers. 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 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, as well as the citation to the Petitioner's work in their own published material. For instance, professor at stated that based on the Petitioner's "triple-injection method," his research group used different behavior tests to assess injury levels, and his findings were later published. While indicated the influence of the Petitioner's work on his own research, he did not establish that the Petitioner's work

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

has been of major significance to the field. *See Visinscaia*, 4 F. Supp. 3d at 134-35. As discussed above, the Petitioner has not shown through his citation history that his contributions have been of major significance in the field. 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.

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 or major trade publications, such as [redacted] and [redacted] Thus, the Director concluded that the Petitioner satisfied this criterion, and the record supports that finding.

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).

IV. 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. 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 B-M-*, ID# 10861 (AAO Sept. 13, 2016)