U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF S-D-P-

DATE: APR. 26, 2017

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a computer engineering researcher, 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 Form I-140, Immigrant Petition for Alien Worker, concluding that the Petitioner had satisfied only one of the initial evidentiary criteria, of which he must meet at least three.

On appeal, the Petitioner submits documentation and 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 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 it fulfills the required number of criteria, is 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 a computer engineering researcher who has worked in the electrical and engineering department at [redacted] Because 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). In denying the petition, the Director found that the Petitioner satisfied 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). On appeal, the Petitioner maintains that he meets the scholarly articles criterion under 8 C.F.R. § 204.5(h)(3)(vi) and the display criterion under 8 C.F.R. § 204.5(h)(3)(vii). 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]

> *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 Director found that the Petitioner's letter from associate professor at attested to the Petitioner's original contributions of major significance in the field. Based on a review of the letter and the record of proceedings, we must withdraw the Director's decision for this criterion.

briefly discussed the Petitioner's two research areas, polymorphic embedded systems and meta-execution frameworks. Regarding polymorphic embedded systems, he stated that the Petitioner "looked at network-on-chip" and "developed some preliminary models" and "integrated application[s] . . . into . . . routing protocols." As it pertained to meta-execution frameworks, indicated that, towards the end of his thesis, the Petitioner was able to develop monitoring schemes and repurpose a hardware unit to flag return-oriented programming attacks. Although he identified the Petitioner's original research, he did not demonstrate that the Petitioner's research has been of major significance in the field.

Moreover, while pointed out that the Petitioner's research was used in three grant proposals submitted to the and the he did not establish that the proposals resulted in their implementation in the field. Although he indicated that ' recently awarded us a contract on based security," an email from stated that "[w]e have been notified by that our proposal has been recommended for selection." The Petitioner also provided copies of the proposals and a white paper, however, he did not show that his research eventually led to the proposals' enactment. A petitioner cannot establish eligibility under this criterion based on the expectation of future significance. The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1). As the Petitioner's research appears to be in the early stages of its actual application in the field, he has not shown that his work rises to the level of original contributions of major significance consistent with the plain language of this regulatory criterion.

In addition, letter primarily contains attestations of the Petitioner's status in the field without providing specific examples of how his contributions rise to a level consistent with major significance. Letters that repeat the regulatory language but do not explain how an individual's contributions have already influenced the field do not meet this criterion. *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.

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

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).

The record also contains screenshots from [redacted] that show seven of the Petitioner's research papers have been cited, but only one paper has been cited more than once; that paper has six citations. Generally, citations can serve as an indication that the field has taken interest in a petitioner's work. In this case, the Petitioner has not demonstrated that the references to his work, considered both individually and collectively, are commensurate with a contribution of major significance in the field. 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 had the impact required to meet this criterion.

Similarly, the Petitioner offers evidence of his presentations at various conferences, such as the 2013 [redacted] in [redacted] Mexico. Participation in conferences demonstrates that his findings were shared with others and may be acknowledged as original based on their selection for presentation. The record, however, does not show that his presentations have been frequently cited by other researchers or that they 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.

Without supporting evidence, the Petitioner has not met his burden of showing that he has made original contributions of major significance in the field. For these reasons, we withdraw the decision of the Director for this criterion.

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 authored articles that were published in professional journals, such as [redacted] and the [redacted] Accordingly, the Petitioner meets this criterion.

Evidence of the display of the alien's work in the field at artistic exhibitions or showcases. 8 C.F.R. § 204.5(h)(3)(vii).

The Petitioner argues that he meets this criterion because "researchers display their work in the form of posters and demonstrations of prototype." In order to demonstrate eligibility for this criterion, the he must show that his work was on display, and that the venues were artistic exhibitions or showcases.[2] Here, the Petitioner is a computer engineering researcher who presented his work at

[2] *See* USCIS Policy Memorandum PM 602-0005.1, *Evaluation of Evidence Submitted with Certain Form I-140*

scientific conferences. He has not established that his presentations were of an artistic nature, or that the events themselves constituted artistic venues. *See Kazarian,* 596 F.3d at 1122 (upholding our conclusion that scientific presentations and lectures are not relevant under this criterion). Accordingly, the Petitioner has not established that he qualifies for the plain language of this criterion.

> *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).

The Director concluded that the Petitioner met this criterion based on his determination that the Petitioner performed in a critical role for [redacted] Based on a review of the record, we must withdraw the Director's decision for this criterion.

In general, a critical role is one in which a petitioner was responsible for the success or standing of the organization or establishment.[3] As a basis for his decision, the Director references [redacted] recommendation letter and the proposal excerpts discussed under the original contributions criterion. Although he stated that the Petitioner "has been instrumental in submitting three research grant proposals," he did not provide details explaining how the Petitioner was instrumental or what role he played in the grant proposals. The proposals themselves indicate that [redacted] is the technical point-of-contact and performs in a far more essential role than the team members. For instance, in the proposal for '[redacted] the team organizational chart shows the Petitioner below the other four members but above the five graduate students, indicating a lesser role compared to the other key members.

Further, the Petitioner has not shown how his involvement with these proposals means he has played a critical role in the university at large. As mentioned above, the Petitioner did not show that the proposals have been approved or implemented, with only one proposal having been recommended for approval as of the date of the filing of the petition. Accordingly, the Petitioner has not established that his efforts in the civil engineering department demonstrate a critical role to [redacted] or that he has contributed to the success or standing of the institution. For these reasons, we withdraw the Director's decision as the Petitioner has not demonstrated that he satisfies this criterion.

B. Summary

As explained above, the record only satisfies one 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).

Petitions; Revisions to the Adjudicator's Field Manual (AFM) 9 (Dec. 22, 2010), http://www.uscis.gov/laws/policy-memoranda.

[3] A leading role is generally evidenced from the role itself. The Petitioner does not indicate, nor does the record reflect, that he has performed in a leading role for [redacted]

Had the Petitioner satisfied at least three evidentiary categories, the next step would be a final merits determination that considers all of evidence 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 foregoing reasons, the Petitioner has not shown that he qualifies as an individual of extraordinary ability.

ORDER: The appeal is dismissed.

Cite as *Matter of S-D-P-*, ID# 390953 (AAO Apr. 26, 2017)