U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF H-X-

DATE: NOV. 9, 2017

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a clinical investigator,[1] 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 revoked the approval of the petition, concluding that the record did not establish, as required, that the Petitioner had satisfied at least three of the regulatory criteria.

On appeal, the Petitioner submits additional evidence. He asserts that he did not receive the Director's notice of intent to revoke and that he meets more than three criteria. In September 2017, we issued a notice of intent to dismiss (NOID) based on discrepancies in the record. The Petitioner responded with a statement and additional exhibits.

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

I. LAW

Section 203(b)(1)(A) of the Act describes qualified immigrants for this classification as follows:

> (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

[1] While the Petitioner listed his company in part 1 of the petition, he indicated in part 5 that he is petitioning for himself.

> (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 two options for satisfying this classification's initial evidence requirements. First, a petitioner can demonstrate a one-time achievement that is a major, internationally recognized award. Alternatively, 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).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether 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. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010).[2] This two-step analysis is consistent with our holding that the "truth is to be determined not by the quantity of evidence alone but by its quality," as well as the principle that we examine "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." *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

With respect to revocations, section 205 of the Act, 8 U.S.C. § 1155, states, in pertinent part, that the Secretary of Homeland Security "may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204."

Regarding revocation on notice, the Board of Immigration Appeals has stated:

> In *Matter of Estime*, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if unexplained and unrebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

Matter of Ho, 19 I&N Dec. 582, 590 (BIA 1988) (citing *Matter of Estime*, 19 I&N Dec. 450 (BIA 1987)).

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[2] This case discusses 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).

By itself, the Director's realization that a petition was incorrectly approved is good and sufficient cause for the revocation of the approval of an immigrant petition. *Id.* The approval of a visa petition vests no rights in the beneficiary of the petition, as approval of a visa petition is but a preliminary step in the visa application process. *Id.* at 589. A beneficiary is not, by mere approval of the petition, entitled to an immigrant visa. *Id.*

II. ANALYSIS

A. Background

The Petitioner founded his own company in 2006, and, at the time of filing the petition in 2011 was in the United States pursuant to a nonimmigrant visa that the company had filed on his behalf. The Petitioner maintains that he is a sponsor-investigator, both initiating and conducting clinical investigations. Initially, he contended that he could not demonstrate a track record of clinical results because of intellectual property concerns that could undermine his ability to treat patients. The record contains the Petitioner's medical degree, an award, professional memberships, presentations, scholarly articles, protocol documentation, and a patent application. The Petitioner also offered his curriculum vitae (CV), which lists experience as a visiting scholar at the from December 1995 through March 2000 as well as a principal investigator with from April 2000 through May 2006, when he founded We note that the record lacks letters from his previous employers corroborating his work experience, as required by 8 C.F.R. § 204.5(g)(1), or its significance.

Moreover, while the Petitioner incorporated in 2006, he has not documented its accomplishments other than obtaining permission to run clinical trials whose outcome is entirely speculative. The record also lacks approved grant applications demonstrating how will fund its research. The materials he provided from reflect that his trials are ongoing but not recruiting patients. The U.S. Food and Drug Administration (FDA) exempted the studies from an Investigational New Drug (IND) Application because the investigation is not intended to be reported to the FDA as a well-controlled study in support of a new indication for use, support any other significant change in the labeling for the drug, or support a significant change in the advertising for a prescription drug product. It also does not involve a change in route of administration, dosage level, or patient population. Finally, the notice advises that the FDA does not "regulate exploratory studies of this kind" and that the submitted protocols "are inadequate for patient treatment."

The Director initially approved the petition. Upon further review, he issued a notice of intent to revoke and ultimately revoked the approval. While the Petitioner asserted that he did not receive that notice, the Director issued it to the address on the petition, which is address. We have considered all evidence responding to the grounds of revocation on appeal and in response to our NOID, discussed below.

B. Discrepancies

In our NOID, we noted several discrepancies regarding his award from the one of his articles, his credentials as listed at a conference, and his representation to U.S. government agencies that he holds a Ph.D. degree. An overseas investigator from U.S. Citizenship and Immigration Services contacted and was advised that the society had never issued a prize with the title on the Petitioner's certificate or any other award to him. Furthermore, contradicting his claimed authorship, the website listed only a single author, not the Petitioner, of the article Finally, an article the investigator located about the 2008 identified the Petitioner as a medical doctor from an institution with which he maintains no affiliation. Finally, he had listed his education as including a Ph.D. on several documents presented to U.S. government authorities when his sole degree is a medical baccalaureate. We advised that the Petitioner could only resolve these issues with independent, objective evidence and that photocopied items would not suffice.

The Petitioner responds to each of those concerns. He maintains executives fill part-time jobs, have no knowledge of occasional awards the society issues, and cannot represent the entity. He affirms that the "physical evidence," the copy of the award, should be sufficient to demonstrate he received it. He offers another photocopy of the award and a photocopy of a "Confirmation Letter" from a ' Office" advising that it issued the award and that the Petitioner's wife accepted it on his behalf. He also notes that chief physician and a professor at declares that he helped the Petitioner prepare his application to join in 2010 and that the society issued him a "prize" based on receiving FDA approval for a clinical trial. Regarding the article on the Petitioner questions the reliability of and supplies another photocopy of the Chinese language version that lists him as an author. He informs that the original is at the but does not, however, submit a copy of the original journal issue with the article. , The Petitioner avows that he did attend the 2008 summit and suggests a different individual with the same name who worked at also attended. He references the list of representatives that includes his name and that of his wife, demonstrating that he did attend, and states that he gave no interviews. Finally, he continues to declare that equated his medical degree to both an M.D. and a Ph.D. He does not, however, provide corroboration from on that point or an evaluation explaining how his bachelor of medicine equates not only to an M.D., but also a Ph.D.

The Petitioner has not overcome our concerns. As noted, the Petitioner did not submit the journal issue that contained his article. In addition, while he presented his biography from the 2008 summit that made no mention of he did not include the registration of a physician with the same name who might have given the interview. Regardless, even assuming

[3] The biography does state that the Petitioner worked for from 1995 through 2000, which the Petitioner has not documented. Accordingly, the record still does not demonstrate that he accurately provided his credentials at that event.

is not a reliable source of the total number of authors and that another individual with the Petitioner's name who did work at attended the 2008 summit, the Petitioner has not overcome the discrepancies regarding his award and how he has represented his education. The Petitioner must resolve this discrepancy in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Specifically, we advised in our NOID that photocopies would be insufficient. As such, additional photocopies relating to the award will not overcome the information from the investigation.

Moreover, the letter from which does not explain how he has firsthand knowledge of the society's award decisions, is not independent objective evidence resolving the discrepancy. In addition, the Petitioner did not offer any corroboration from the relevant government agencies confirming that they reviewed his medical degree and found it equivalent to both an M.D. and a Ph.D. Nor has he provided his transcript and an independent expert evaluation that compares his credits during that program with those required to receive a Ph.D. in the United States. For these reasons, serious discrepancies in the record remain. *Id.*

C. Criteria

Despite the concerns we set forth above, the record demonstrates that the Petitioner has satisfied a single criterion. Regardless of whether the Petitioner authored ' there are four additional articles in the record.[4] Accordingly, he meets the authorship of scholarly articles criterion at 8 C.F.R. § 204.5(h)(3)(i). For the reasons discussed below, however, he does not meet any other criteria.

> *Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.* 8 C.F.R. § 204.5(h)(3)(i).

The Petitioner relies on the award for this criterion. As discussed above, he has not overcome the information we obtained indicating that the society did not issue that or any other award to the Petitioner. The Petitioner now maintains that it was an "occasional" award, separate from the awards the organization issues to larger groups of people and that the infrequency demonstrates its significance. On the contrary, the fact that a representative of the society's own had no knowledge of the award suggests that, if it exists, it is not recognized within the society. The record also lacks evidence confirming that this award, if it occurred, is recognized beyond contends that decided to issue the award, but does not explain how that award is nationally or internationally recognized outside The Petitioner also did not offer official printed or online materials containing the criteria for the award or announcing the selection to the field. Finally, the record lacks media coverage of the selection or ceremony to demonstrate its national or international recognition. For all of these reasons, the Petitioner has not satisfied this criterion.

[4] As noted by the Petitioner, he submitted five articles rather than three as stated in our NOID.

> *Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.* 8 C.F.R. § 204.5(h)(3)(ii).

The Petitioner's memberships in the [redacted] the [redacted] the [redacted] and [redacted] do not meet the requirements for this criterion. A letter bearing the stamped signature of [redacted] executive director and chief executive officer of [redacted] states that members "need have the [*sic*] outstanding achievements, as judged by recognized national level experts in the field of chemical [*sic*]." The Petitioner did not present bylaws or other official materials confirming the exact membership requirements. A letter bearing the stamped signature of [redacted] director of membership for [redacted] provides: "Based on your outstanding achievements in the discipline of clinical oncology as recognized by our experts in the [redacted] we appreciate your joined [*sic*]." Merely repeating the language of the statute or regulations does not satisfy the 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*, 1997 WL 188942 at *5 (S.D.N.Y.). As noted by the Director, according to their bylaws, [redacted] is open to experienced licensed physicians or other health professionals who devote a majority of their professional activity to cancer patient care, research, or education; and [redacted] admits investigators who have two years of research resulting in peer-reviewed publications relevant to cancer. The bylaws for [redacted] reflect that an individual member must be "well educated and have basic professional qualification," and be recommended by two active members.

On appeal, the Petitioner contends that each of these associations reviewed his credentials and offered him membership based on his outstanding achievements. The record does not support that conclusion. The Petitioner did not document the requirements to join [redacted] The remaining entities are professional organizations that require experience in the field, publications, and recommendations. The Petitioner has not shown that any of those factors represent outstanding achievements as opposed to demonstrated competence in the field. Accordingly, he has not met this criterion.

> *Published materials about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.* 8 C.F.R. § 204.5(h)(3)(iii).

Previously, the Petitioner contended that the inclusion of his study on the FDA's website serves to meet this criterion. The Director concluded that the record did not contain evidence that the website is major media. On appeal, the Petitioner notes that [redacted] maintains clinicaltrials.gov. Listings of clinical studies that name the Petitioner as a sponsor, investigator, or contact do not constitute titled and authored published materials about him relating to his work as required. The record contains no articles or other journalistic coverage of him that might relate to this criterion. As such, he has not satisfied it.

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 Petitioner relies on his role as the "chairman of the [redacted] for [redacted] his own company to meet this criterion. The board, however, is designed to review [redacted] studies, for which the Petitioner will be the principal investigator. Accordingly, he has appointed himself as a judge of his own work. That position fails to meet the plain language of this criterion, which requires judging the work of others.

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 he designed parallel research protocols while working for [redacted] from 1995 through 2000. He offers articles on [redacted] and [redacted] The record does not contain corroborating evidence that credits him for their protocol design, or letters from officials at [redacted] confirming his position and role. The Petitioner next relies on his work for the foreign entity [redacted] where he maintains that he proved the safety and efficacy of several traditional Chinese medicines. The record does not establish that his work there resulted in contributions of major significance in the field. He did not publish any articles during his time there.

The Petitioner's publication record does not support his eligibility under this criterion. Since 1995, he has published one paper, a 2004 article on [redacted] He has not documented that others in the field have cited this article or otherwise verified its influence.

Finally, the Petitioner relies on the studies he has designed for [redacted] While the FDA may have authorized these trials, not every trial design is a contribution of major significance. Moreover, the letter from the FDA finding the proposed study [redacted] exempt specifies that the "protocols [the Petitioner has] submitted are inadequate for patient treatment." The FDA website listings indicate that none of the Petitioner's trials are accepting patients. The letter with the signature stamp of [redacted] chief executive officer of [redacted] details what the Petitioner plans to study, concluding he will "surely be able to succeed, this is being [*sic*] no doubt." Similarly, [redacted] explains the value of [redacted] use against small cell lung cancer and describes the Petitioner's aim to personalize treatment for this disease. Proposals, even if promising, are not evidence of contributions that have already impacted the field at a level of major significance. For all of the above reasons, the Petitioner has not satisfied 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 relies on the presentation of his [redacted] research at the 2008 summit, but does not explain how that event was an "artistic exhibition or showcase" as required. Scientific presentations are often published in proceedings and fall under the scholarly articles criterion

which, as discussed above, the Petitioner meets. The Petitioner offers no justification for considering such evidence separately under this criterion and we find that declining to do so is consistent with the relevant regulatory language. *Kazarian*, 596 F.3d at 1122.

III. CONCLUSION

The Petitioner is not eligible because he 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). Thus, we need not fully address the totality of the materials in a final merits determination. *Kazarian*, 596 F.3d at 1119-20. Nevertheless, we have reviewed the record in the aggregate, concluding that it does not support a finding that the Petitioner has established the level of expertise required for the classification sought.

ORDER: The appeal is dismissed.

Cite as *Matter of H-X-*, ID# 466601 (AAO Nov. 9, 2017)