U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF C-S-

DATE: SEPT. 20, 2017

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a research data analyst, 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 Form I-140, Immigrant Petition for Alien Worker, concluding that the Petitioner had satisfied only two of the ten initial evidentiary criteria, of which he must meet at least three.

On appeal, the Petitioner submits a brief and an example of a request for evidence (RFE) issued by the Director in an unrelated case. The Petitioner contends that he meets three criteria and that the Director's RFE was flawed because it did not inform him of deficiencies in the evidence initially submitted for the original contributions criterion.

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

I. LAW

Section 203(b)(1)(A) of the Act makes visas available to immigrants with extraordinary ability 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 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 of evidence listed at 8 C.F.R. § 204.5(h)(3)(i)-(x) (including items such as awards, memberships, and published material in certain media).

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) (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). 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).

II. ANALYSIS

The Petitioner has worked at the since May 2007 and is currently employed as a senior data analyst. According to a letter from the Petitioner "is currently working in a full-time research position" and "is responsible for carrying out autoimmune disease research; planning, designing, and conducting quality controls on experimental data collections; analyzing and interpreting genetic research data; preparing the primary results for grant applications; and [authoring] manuscripts for publication."

A. Evidentiary Criteria

As he has not established that he has received a major, internationally recognized award, the Petitioner must satisfy at least three of the ten criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Director found that the Petitioner met the following two criteria: judging at 8 C.F.R. § 204.5(h)(3)(iv) and authorship of scholarly articles at 8 C.F.R. § 204.5(h)(3)(vi). The record supports those findings. For example, the Petitioner's documentary evidence indicates that he has reviewed manuscripts for In addition, he authored articles that have appeared in professional publications such as and On appeal, he asserts that he meets the original contributions of major significance at 8 C.F.R. § 204.5(h)(3)(v). In addition, he contends that the Director's RFE did not inform him of the deficiencies in his evidence regarding this criterion, as described in the denial decision. We note that the Director may, as a matter of discretion, request additional evidence if the record does not establish eligibility, but

he is not required to do so. *See* 8 C.F.R. § 103.2(b)(8). Regardless, the Petitioner has had an opportunity to address the Director's findings on appeal, and we review the record on a *de novo* basis. Upon review, we conclude that the record does not support a finding that the Petitioner meets the plain language requirements of at least three criteria.

> *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 submitted his publications and presentations, citation evidence for his published work, and letters of recommendation from colleagues. The Director acknowledged the Petitioner's submission of the preceding evidence, but found that it was not sufficient to demonstrate that the Petitioner's work constituted original contributions of major significance in the field.

On appeal, the Petitioner asserts that he "has a total of 14 publications in prestigious peer-reviewed journals" and that those journals "have been consistently ranked among the most cited internationally." He further contends that his publications and their citation history indicate that he "has made scientific contributions of major significance in the field of modern genetics." With respect to the Petitioner's published work, the regulations contain a separate and distinct criterion concerning the authorship of scholarly articles in professional publications at 8 C.F.R. § 204.5(h)(3)(vi), a category that he has already satisfied. In *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009), the court held that publications and presentations are not sufficient evidence under 8 C.F.R. § 204.5(h)(3)(v) absent evidence that they were of "major significance" in the field. In 2010, the *Kazarian* court reaffirmed its holding that we did not abuse its discretion in finding that the petitioner had not demonstrated contributions of major significance. 596 F.3d at 1122. Furthermore, there is no presumption that every published article or conference presentation is a contribution of major significance in the field; rather, the petitioner must document the actual impact of his article or presentation.

As one type of evidence of the impact of his work, the record includes an August 2016 citation report indicating that his 2013 article entitled ' was "cited by 47."[1] His next most cited article, ' (2010) was "cited by 37" including self-citations. Regarding the remaining articles the Petitioner has authored, the aforementioned report reflects 25 or less citations for each.

In support of his claim that his articles have garnered a "high number of citations," he offers a 2005-2015 chart showing baselines and percentiles for various research fields, including "Immunology." In that category, the chart reflects that his article from 2013 was cited at a level placing it among the top of papers in its year of publication and that his article from 2010 was among the top of papers. Regardless, the

[1] The record reflects that at least two of the citations were self-cites by the Petitioner.

submitted data does not establish that the Petitioner's research findings in the aforementioned articles rise to the level of contributions of major significance in the field.

Generally, citations can confirm that the field has taken interest in a researcher's work.. The Petitioner submitted several examples of articles and review papers that cited to his work; however they do not reflect that his work was singled out as particularly important. Rather, the Petitioner's findings were utilized as background information to the authors' papers. In this case, the Petitioner has not demonstrated that the citations to his work, considered both individually and collectively, are commensurate with contributions "of major significance in the field."

The Petitioner also provided articles and press releases from available at and The aforementioned articles discuss a research study led by but they do not mention the Petitioner or his specific contribution to the project. For example, while the medicalexpress.com article indicates that "thirty-seven researchers . . . took part in study," the Petitioner is not identified anywhere in the article for his contribution. In addition, he offered a blog entry, textbook chapters, and websites which briefly reference his work, but they are not sufficient to demonstrate the major significance of his contributions.

As another form of evidence under this criterion, the Petitioner contends that that a number of experts have offered testimony regarding his contributions of major significance. For example, director of the states that the Petitioner "verified 20 previously reported SLE [systemic lupus erythematosus] genes and discovered 10 new SLE risk genes. Particularly, one gene called showed a high likelihood of being involved in the development of lupus." further notes: "With these new genes identified, other lupus researchers (including myself) have exact targets for further investigation of lupus pathogenesis, and are moving closer towards the ultimate goal of lupus treatment." While the Petitioner has identified genetic targets for further investigation, he has not shown that his findings have affected the field in a major way, that his research has been widely utilized, or that his work otherwise constitutes contributions of major significance in the field.

assistant staff at the asserts that the Petitioner has "made tremendous contributions to our understanding of SLE and how to effectively diagnose them [*sic*]." In addition, she contends that his research "has undoubtedly impacted the way we research and treat SLE and other debilitating diseases," but does not offer specific examples of how Petitioner's work has influenced the biomedical industry or human genetics field, or has otherwise been of major significance to the field.

A coauthor of the Petitioner, professor of medicine at indicates that the Petitioner's work offers "a possible drug treatment target for SLE" and has "concrete and immediate applications in the diagnosis and treatment of the serious disease of lupus," but does not specify those applications or identify examples of their impact on diagnostic or

treatment protocols. We recognize that research must add information to the pool of knowledge in some way in order to be accepted for publication, presentation, funding, or academic credit, but not every individual who performs original research has inherently made a contribution of "major significance" to the field. The evidence does not show that the Petitioner's work has substantially influenced the field or otherwise rises to the level of original contributions of major significance in human genetics research.

The record also contains four other recommendation letters from the Petitioner's peers. Although these remaining letters praise his work, they do not demonstrate how his contributions are "of major significance in the field." Instead, the letters reference the importance of the Petitioner's works as indicated by their publication in professional journals. As discussed above, the Petitioner has not shown through his citation history or other evidence that his work, once published or presented, has been of major significance in the field. Again, while the selection of the Petitioner's articles in professional journals or at conference proceedings 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 U.S. Citizenship and Immigration Services' (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 discussions of the Petitioner's computational skills and research projects without providing specific examples of how his contributions rise to a level consistent with major significance in the field. USCIS need not accept primarily conclusory statements. *1756, Inc. v. The U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990). Without sufficient evidence demonstrating that his work constitutes original scientific contributions of major significance in the field, the Petitioner has not established that he meets this criterion.

B. Final Merits Determination

The Petitioner is not eligible because he has not submitted the required initial evidence of either a qualifying 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 do not need to fully address the totality of the materials in a final merits determination. *Kazarian*, 596 F.3d at 119-20.[2] Nevertheless, we advise that 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.

[2] In addition, as the Petitioner has not established his extraordinary ability under section 203(b)(1)(A)(i) of the Act, we need not determine whether he is coming to "continue work in the area of extraordinary ability" under section 203(b)(1)(A)(ii).

As mentioned above, the Petitioner has reviewed manuscripts, conducted original research, and authored scholarly articles. Regarding the Petitioner's work as the judge of others, he has not presented documentation that sets him apart from others in his field, such as evidence that he has a consistent history of completing a substantial number of review requests relative to others, served in an editorial position for a distinguished journal or publication, or chaired a technical committee for a reputable conference, to establish that his peer review experience places him among that small percentage at the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2). With respect to his authorship of scholarly articles, the Petitioner has not provided sufficient documentation to establish that his publication record, which includes 14 coauthored papers in professional journals and four papers presented at conferences, is consistent with sustained national or international acclaim at the very top of the field. Further, the Petitioner has not demonstrated, through his citation evidence or expert testimonials, that his work has been considered of major significance and garnered acclaim in the field.

The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward the top. USCIS has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r. 1994). Here, we find the record insufficient to demonstrate that he has sustained national or international acclaim and is among the small percentage at the top of his field. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2).

III. CONCLUSION

For the reasons discussed above, the Petitioner has not established eligibility as an individual of extraordinary ability.

ORDER: The appeal is dismissed.

Cite as *Matter of C-S-*, ID# 699805 (AAO Sept. 20, 2017)