U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF J-Y-

DATE: APR. 17, 2018

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a doctoral candidate and researcher in the field of material chemistry, 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, concluding that the record did not establish, as required, that the Petitioner met at least three of the ten initial evidence requirements.

On appeal, the Petitioner submits additional evidence, asserting that he meets the necessary criteria and qualifies for the classification.

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
>
> (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).[1] 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 is a doctoral candidate and researcher in the field of material chemistry. Because he has not indicated or established that he has received a major, internationally recognized award, to meet the initial evidence requirements, he must satisfy at least three of the ten criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x).

In denying the petition, the Director found that the Petitioner met two criteria: participation as a judging under 8 C.F.R. § 204.5(h)(3)(iv) and authorship of scholarly articles under 8 C.F.R. § 204.5(h)(3)(vi). On appeal, he maintains that he also meets the original contributions criteria under 8 C.F.R. § 204.5(h)(3)(i) and (v). We have reviewed all of the evidence in the record, and concur with the Director that the Petitioner has met the judging and scholarly articles criteria. However, we conclude that the record does not support a finding that the Petitioner satisfies at least three criteria.[2]

[1] 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).

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

> *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 submits evidence that he has reviewed manuscripts submitted for publication in [redacted] This evidence meets the regulation at 8 C.F.R. § 204.5(h)(3)(iv).

> *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).

This regulatory criterion contains multiple evidentiary elements that the Petitioner must satisfy. The first is evidence of his contributions in the field. These contributions must have already been realized rather than being potential, future contributions. He must also demonstrate that his contributions are original, and are scientific, scholarly, artistic, athletic, or business-related in nature. The final requirement is that the contributions rise to the level of major significance in the field as a whole, rather than to a project or to an organization. The phrase "major significance" is not superfluous and, thus, it has meaning. *See Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F.3d 28, 31 (3d Cir. 1995), *quoted in APWU v. Potter*, 343 F.3d 619, 626 (2d Cir. 2003). The term "contributions of major significance" connotes that the Petitioner's work has significantly impacted the field. *See* 8 C.F.R. § 204.5(h)(3)(v); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 134 (D.D.C. 2013).

The Petitioner claims that he has made original contributions of major significance in the field of material chemistry. Specifically, he claims that his research regarding the use of nanodiamonds in drug delivery, titanium dioxide structures, and fullerene, and the results of such research, have significantly influenced the field. In support of this assertion, he submits numerous testimonial letters.[3]

Many of the supporting letters indicate that the Petitioner's work has provided a basis for new research. [redacted], Professor and [redacted] University states that his own research in gold nanoparticles was "inspired and encouraged" by the Petitioner's work. Similarly, [redacted], CEA Research Director for [redacted], notes that the Petitioner's research on titanium dioxide structures has inspired further research in the area. [redacted], Secretary General and Professor of Applied Chemistry at the [redacted] University, refers to the Petitioner's pioneering research using egg albumin and states that a recent paper by his organization was "inspired" by the Petitioner's use of egg albumin as a bio-template. [redacted] Head of Operations for [redacted] states that the Petitioner's research "has helped and inspired [him] tremendously on [his] drug formulation projects." While these letters demonstrate that the Petitioner's work has been discussed, reproduced, and compared by other researchers in the field, they do not provide

[3] We have reviewed and considered all letters in the record, even if not specifically referenced in this decision.

specific examples of how the Petitioner's work has significantly impacted the field at large or otherwise constitutes original contributions of major significance.

Several letters discuss the significance of the Petitioner's current research. Professor in the Department of Chemistry and Biochemistry at describes the Petitioner's current research on detecting explosive chemicals in public areas, noting it "will substantially benefit both researchers and engineers in the chemical sensor field." He also states that the Petitioner's ongoing work involving controlled drug release mechanisms is "very promising" and that his preliminary results "seem pretty good." applauds the Petitioner's work using egg albumin to prepare titanium dioxide nanostructures, stating that "his recent work will provide missing puzzle pieces and add more contributions in the field of material chemistry."

Although these attestations discuss the potential impact of the Petitioner's work, these references do not provide examples of how his work is already influencing the field such that it qualifies as a contribution of major significance. The plain language of 8 C.F.R. § 204.5(h)(3)(v) requires the Petitioner to establish that his original contribution has already had a major and significant impact on the field at the time of filing. *See* 8 C.F.R. § 103.2(b)(1). Thus, the possibility of a future impact, even a profound one, does not satisfy the criterion's requirements.

Several writers reference citations to the Petitioner's work as evidence of his contributions. references his awareness of two Ph.D. candidates at other universities that cited the Petitioner's research in their dissertations. notes the Petitioner's previous research garnered a significant number of citations after publication, while states that that he has cited the Petitioner's work in two of his books. claims that the Petitioner has influenced the studies of many researchers in the field, noting citations to his "experimental and theoretical work on nanodiamonds." In support of this contention, the record contains citation indexes from and demonstrating that the Petitioner's publications have garnered a total of 160 citations to date (72 per index, noting that an additional 16 citations have not yet been collected by .

When considered as a whole, the record does not sufficiently demonstrate that the citations to the Petitioner's research have impacted the field in a manner consistent with this criterion's requirements. The letters submitted on his behalf indicate that he has influenced some researchers conducting similar work, but do not demonstrate the significance of his impact on the field as a whole. The record lacks evidence showing the significance of the number of researchers influenced by his contributions, or that the number of citations he has received indicates a major impact in the field. *See Visinscaia*, 4 F. Supp. 3d at 135-136 (concluding that the decision of U.S. Citizenship and Immigration Services (USCIS) to give limited weight to uncorroborated assertions from practitioners in the field was not arbitrary and capricious).

The regulation at 8 C.F.R. § 204.5(h)(3)(v) requires "[e]vidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of *major significance* in the field." (Emphasis added). Without additional, specific evidence showing that the Petitioner's work has risen to the level of contributions of major significance, he has not established that he meets 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).

The Petitioner documented his authorship of scholarly articles in professional publications, such as the [redacted] and [redacted] Thus, the Director concluded that the Petitioner satisfied this criterion, and the record supports that finding.

III. CONCLUSION

The Petitioner is not eligible for the classification 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 J-Y-*, ID# 1087158 (AAO Apr. 17, 2018)