U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF X-L-

DATE: JULY 10, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a 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 two of the ten initial evidentiary criteria, of which he must meet at least three.

On appeal, the Petitioner submits additional documentation and a brief, arguing that he meets at least three of the ten criteria.

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,
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> (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). 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). The regulation at 8 C.F.R. § 204.5(h)(4) allows a petitioner to submit comparable material if it is able to demonstrate that the standards at 8 C.F.R. § 204.5(h)(3)(i)-(x) do not readily apply to a beneficiary's occupation.

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 is a postdoctoral researcher at the [redacted] Because he 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 met only two of the initial evidentiary criteria, judging under 8 C.F.R. § 204.5(h)(3)(iv) and scholarly articles under 8 C.F.R. § 204.5(h)(3)(vi). The record reflects that the Petitioner reviewed manuscripts for journals, such as [redacted] and served as an assistant editor for [redacted] In addition, the Petitioner authored scholarly articles in publications, such as the [redacted] Accordingly, we agree with the Director that the Petitioner satisfied the judging and scholarly articles criteria.

On appeal, the Petitioner maintains that he meets one additional criterion, discussed below. We have reviewed all of the evidence in the record and conclude that it does not support a finding that the Petitioner satisfies 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 Director concluded that the "number of citations of [the Petitioner's] work, when compared with that of the leading scientists in the field, whose publications . . . have garnered citations numbered well in the thousands, does not substantiate contributions of major contributions of major significance the field." On appeal, the Petitioner argues that "this statement amounts to an imposition of a threshold number of total citations that is apparently required to demonstrate major significance." Moreover, the Petitioner argues that rating among the top 10% most cited in a subject area is the most important indicator of a publication's significance and "allows for one's individual papers to be compared to all of the many thousands of papers published in their field each year and reasonably assess the relative impact that those papers have had."

In order to satisfy the regulation at 8 C.F.R. § 204.5(h)(3)(v), a petitioner must establish that not only has he made original contributions but that they have been of major significance in the field. For example, a petitioner may show that the contributions have been widely implemented throughout the field, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance in the field. Moreover, we generally agree that the Director's comparison of the Petitioner's overall number of citations to that of other scientists or researchers in his field is not appropriate in determining whether he has made original contributions of major significance in the field. Rather, the Director's evaluation of the Petitioner's total citations relative to others in his field would be more relevant in a final merits determination to demonstrate his sustained national or international acclaim, that he is one of the small percentage at the very top of the field of endeavor, and that his achievements have been recognized in the field through extensive documentation. Furthermore, a publication that bears a high ranking or impact factor is reflective of the publication's overall citation rate. It does not, however, demonstrate the influence of any particular author within the field, how an author's research impacted the field, or establishes a contribution of major significance in the field.

The Petitioner argues and offers evidence that ten of his papers are in the top 10% most cited by subject area for the year in which they were published. For example, his two highest cited articles, [redacted] ranked among the top 10% with 41 and 28 citations, respectively, while his lowest cited article, [redacted] also placed in the top 10% with two citations. The comparative ranking of a paper's citation rate does not automatically establish it as a majorly significant contribution to the field. Rather, the appropriate analysis is to determine whether a petitioner has shown that his individual articles or presentations, factoring in citations and other corroborating evidence, have been considered important at a level consistent with original contributions of major significance in the field. Although citations show that his research has received attention from the field, the Petitioner did not establish that the citations to his individual

papers demonstrate their "major significance." While the Petitioner submitted samples of papers that cited to his work as background information for the authors' papers, they do not reflect that his works were singled out as particularly important.

Further, in reviewing his recommendation letters, the authors discuss the Petitioner's research without demonstrating the impact of his work in the field.[1] For instance, investigator at the indicated his collaboration with the Petitioner in publishing the above-mentioned paper in the and stated that the Petitioner's "work was critical to the project and publication."[2] Likewise, investigator for in talking about the Petitioner's article published in the stated that his "methodology played a crucial role in these projects, and, therefore, he has made original contribution in the corresponding publications." Neither nor demonstrated the influence of the Petitioner's work on the field beyond publishing articles in journals. Publications and presentations are not sufficient under 8 C.F.R. § 204.5(h)(3)(v) absent evidence that they were of "major significance." *See Kazarian v. USCIS,* 580 F.3d 1030, 1036 (9th Cir. 2009), *aff'd in part*, 596 F.3d 1115.

In addition, the letters speculate on the prospective potential impact of the petitioner's research. For instance, professor at claimed that the Petitioner's "work will lead to the discovery of new antimicrobial agents to help solving [sic] the increasing concern of drug-resistant bacteria." Moreover, lecturer at the asserted that the Petitioner's work "holds great promise for the development of drugs that will be able to cure or prevent many diseases." Further, professor at opined that "the therapeutics created by [the Petitioner] [are] a very promising tool to use in practical settings." The letters, however, do not demonstrate how the Petitioner's work already qualifies as a contribution of major significance in the field.

The letters considered above primarily contain attestations of the Petitioner's status in the field without providing specific examples of contributions that 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 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. 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).

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[1] *See* USCIS Policy Memorandum PM 602-0005.1, *Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator's Field Manual (AFM) Chapter 22.2, AFM Update AD11-14* 8-9 (Dec. 22, 2010), https://www.uscis.gov/policymanual/HTML/PolicyManual.html; *see also 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).

[2] Although we discuss a sampling of letters, we have reviewed and considered each one.

Further, the Petitioner contends that he provided media reports of his findings showing the significance of his work. The record contains screenshots; however, the Petitioner did not demonstrate that the news articles show the field's recognition of his research as having had major significance. For example, the Petitioner did not show that the relevant websites garner significant recognition from the field. Moreover, similar to his recommendation letters, the screenshots focus on the possible influence of the petitioner's research, rather than how his work already qualifies as a contribution of major significance in the field. For instance, the screenshots state that "[s]cientists have developed a potential new therapy," "[t]he new study could provide the foundation for treatments for a range of other diseases," and "[t]he research team is working to optimize the treatment for potential use in humans . . . hopes the method could someday deliver long-lasting doses . . . to patients in need." In addition, the Petitioner provided an article from the relating to two scientific teams who independently worked on the same issue at the same time without knowing it. Although the article discusses the history and findings, it does not indicate how the research qualifies as an original contribution of major significance in the field.

Finally, the Petitioner argues that he signed a contract with to transfer his technological patent to the company. A patent may recognize the originality of an invention or idea but does not necessarily establish that it is a contribution of major significance in the field. The record contains a letter from CEO, who stated that licensed one of the Petitioner's provisional patents, which is the only technique it could find on the market. Moreover, indicated that was able to hire "a few PhD level researchers to focus on the application and further development of [the Petitioner's] methodology." While discussed the impact of the Petitioner's technique/patent on , he did not demonstrate its influence on the overall field.

For these reasons, the Petitioner has not met his burden of showing that he has made original contributions of major significance in the field.

III. CONCLUSION

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. As a result, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. 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 acclaim and recognition required for the classification sought.

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, the Petitioner has not shown that the significance of his research is indicative of the required sustained national or international acclaim or that it is consistent with a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also*

section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate that the Petitioner has garnered national or international acclaim in the field, and he is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2).

For the foregoing reasons, the Petitioner has not shown that he qualifies for classification as an individual of extraordinary ability.

ORDER: The appeal is dismissed.

Cite as *Matter of X-L-*, ID# 1487385 (AAO July 10, 2018)