U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF N-S-S-

DATE: JUNE 19, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a research scientist, 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 although the Petitioner satisfied three of the regulatory criteria, as required, he did not show sustained national or international acclaim and demonstrate that he is among the small percentage at the very top of the field of endeavor.

On appeal, the Petitioner submits additional documentation and a brief, arguing that he has sustained the required acclaim and has risen to the very top of his field.

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). 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).

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 research scientist who is working at [redacted] based in [redacted] As the Petitioner has not 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).

A. Evidentiary Criteria

The Director found that the Petitioner met the following three criteria: judging under 8 C.F.R. § 204.5(h)(3)(iv), original contributions under 8 C.F.R. § 204.5(h)(3)(v), and scholarly articles under 8 C.F.R. § 204.5(h)(3)(vi). The record reflects that the Petitioner reviewed manuscripts for the [redacted] and the [redacted] In addition, the Petitioner authored articles in publications, such as [redacted] and the [redacted] Accordingly, we agree with the Director that the Petitioner met the judging and scholarly articles criteria. However, we do not concur with the Director's determination that the Petitioner met the original contributions criterion discussed below.

In order to satisfy the regulation at 8 C.F.R. § 204.5(h)(3)(v), a petitioner must establish not only that he has made original contributions but that they have been of major significance in the field.[1] For instance, a petitioner may show that his 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 his overall field. The record reflects that the Petitioner claimed eligibility for this criterion based on media reports of his research, his publications and presentations, and recommendation letters.

As it relates to media reports, the Petitioner provided screenshots of press releases and news reports from 2014 reflecting that "[r]esearchers have identified a compound, [redacted] that may treat symptoms of depression." The screenshots are based on the Petitioner's co-authorship of an article published in [redacted] The majority of the screenshots, while posted on various websites, such as [redacted] and [redacted], include identical or nearly identical articles. The Petitioner, however, did not demonstrate that the posting of the press releases and news articles on the websites is consistent with the field recognizing his research as having had major significance. For example, the Petitioner did not show that the websites garner significant recognition from the field. Moreover, the screenshots focus on the prospective potential impact 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 "[it] may treat symptoms of depression," "[redacted] may also serve as a future therapeutic approach," "there may be a new compound to treat depression," [redacted] unique properties increase the possibility of the development of a self-administered, daily treatment," and "we hope that the results of this study will enable future investigations into this potentially therapeutic and important compound."

The Petitioner also indicated that he authored scholarly articles, considered under the scholarly articles criterion, and that he presented his original research at numerous international symposiums. Participation in a conference demonstrates that his findings were shared with others and may be acknowledged as original based on their selection for presentation. However, the Petitioner did not establish that the selection of his papers for presentation at conferences and requests for him to speak, in-and-of-themselves show the major significance of his contributions. 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. Although the Petitioner presented evidence at the initial filing that his top two articles were cited 36 and 31 times, respectively, he did not show that such citations reflect that his work has significantly impacted or influenced the field.[2] Further, the Petitioner has not demonstrated that his other published articles and presentations rise to a level consistent with original contributions of major significance in the field.

[1] 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."

[2] While the Petitioner provides an updated citation list on appeal reflecting that his top two articles have been cited 81 and 52 times, respectively, he did not establish that the increased citations show that his articles or findings have been of major significance in the field.

In addition, the Petitioner provided recommendation letters that discussed the Petitioner's research without demonstrating the impact or influence of his work in the field. Similar to the websites mentioned above, the letters recounted the Petitioner's findings, indicated their publications in journals, and speculated on the potential impact without showing how his research is already considered to be of major significance in the field. For example, , associate director for drug safety with discussed the Petitioner's research regarding and claimed that "[t]hese contributions of [the Petitioner] will play a very important role in establishing therapeutic treatments for psychiatric disorder."[3] Furthermore, , director of the department of drug sciences at indicated the Petitioner's work with multi-drug resistance in cancer treatment and opined that his method "is a promising tool to achieve an important goal in our laboratory." Moreover, associate professor at mentioned the Petitioner's research in identifying modulators for and asserted that it is "a potential therapeutic target for [a] number of metabolic disorders."

The letters considered above primarily contain 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 are insufficient to establish original contributions of major significance in the field. *See Kazarian*, 596 F.3d at 1122 (finding USCIS' conclusion that "letters from physics professors attesting to [the petitioner's] contributions in the field" were insufficient was "consistent with the relevant regulatory language"). 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). Again, the documentation speculates on the possibility of impacting or influencing the field without demonstrating that the Petitioner's research is already a contribution of major significance to the overall field.[4] Because the Petitioner did not establish that he has made original contributions of major significance in the field consistent with the regulation at 8 C.F.R. § 204.5(h)(3)(v), we withdraw the decision of the Director for this criterion.

B. O-1 Nonimmigrant Status

We note that the record reflects that the Petitioner received O-1 status, a classification reserved for nonimmigrants of extraordinary ability. Although USCIS has approved at least one O-1 nonimmigrant visa petition filed on behalf of the Petitioner, the prior approval does not preclude USCIS from denying an immigrant visa petition which is adjudicated based on a different standard – statute, regulations, and case law. Many Form I-140 immigrant petitions are denied after USCIS

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

[4] *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), http://www.uscis.gov/laws/policy-memoranda; *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).

approves prior nonimmigrant petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *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). Furthermore, our authority over the USCIS service centers, the office adjudicating the nonimmigrant visa petition, is comparable to the relationship between a court of appeals and a district court. Even if a service center director has approved a nonimmigrant petition on behalf of an individual, we are not bound to follow that finding in the adjudication of another immigration petition. *Louisiana Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, at *2 (E.D. La. 2000).

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 level of expertise 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 N-S-S-*, ID# 1409432 (AAO June 19, 2018)