U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF U-S-

DATE: MAY 30, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a molecular geneticist, 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, she did not show sustained national or international acclaim and demonstrate that she 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 she has sustained the required acclaim and has risen to the very top of her 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 molecular geneticist who is working as a research scientist at [redacted] in [redacted] New York. As the Petitioner has not established that she has received a major, internationally recognized award, she 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 two manuscripts for [redacted] and authored six scholarly articles in published professional journals, such as [redacted] thereby fulfilling the judging and scholarly articles criteria. However, the record does not support the Director's determination regarding original contributions of major significance. Although we do not find that the Petitioner meets at least three criteria, we will evaluate the totality of the evidence, including her claims of original contributions of major significance in the field, in the context of the final merits determination below.

B. Final Merits Determination

While the Petitioner has not established the requisite initial evidence, we will evaluate whether she has demonstrated, by a preponderance of the evidence, her sustained national or international acclaim and that she is one of the small percentage at the very top of the field of endeavor, and that her achievements have been recognized in the field through extensive documentation. In a final merits determination, we analyze a petitioner's accomplishments and weigh the totality of the evidence to determine if her successes are sufficient to demonstrate that she has extraordinary ability in the field of endeavor. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20. In this matter, we determine that the Petitioner has not shown her eligibility.

The record reflects that the Petitioner received her doctor of philosophy in molecular medicine from in Germany in 2009. According to her Form G-325A, Biographic Information, she has worked as a research scientist for (2010 – 2012), (2012 – 2013), and (2013 – present). As mentioned above, the Petitioner reviewed manuscripts, authored scholarly articles, and conducted research. The record, however, does not demonstrate that her achievements are reflective of a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990).

Regarding her judging service, an evaluation of the significance of her experience is appropriate to determine if such evidence is indicative of the extraordinary ability required for this highly restrictive classification. *See Kazarian,* 596 F. 3d at 1121-22. The record reflects that the Petitioner completed two manuscript reviews for in 2015. Here, the Petitioner did not establish that her review of two manuscript reflects the required sustained national or international acclaim. *See* section 203(b)(1)(A) of the Act. We note that the Petitioner provided evidence showing requests from for her review of four additional manuscripts in 2014 and 2015, and a 2015 email from *Roger* inviting her to join the editorial board. The Petitioner, however, did not show that she performed the additional manuscript reviews or served on the editorial board. Regardless, the Petitioner has not demonstrated that the additional four manuscript reviews and editorial board membership would show a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. at 59. Nor is there supporting evidence demonstrating the stature of the two journals to show that such invitations are reflective of sustained national or international acclaim.

Furthermore, in many scientific and academic fields, peer review is a routine element of the process by which books and articles are selected for publication or for presentation at conferences. Participation in the peer review process does not automatically demonstrate that an individual has sustained national or international acclaim at the very top of her field. Without evidence that sets her apart from others in her field, such as evidence that she has a consistent history of completing a substantial number of review requests relative to others, served in editorial positions for distinguished journals or publications, or chaired technical committees for reputable conferences, the

Petitioner has not established her peer review experience places her among that small percentage at the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2).

With regard to her authorship of scholarly articles, the Petitioner presented evidence showing that she authored six papers in professional journals. The Petitioner, however, has not demonstrated that this publication record is consistent with being among the small percentage at the top of the field or having a "career of acclaimed work." H.R. Rep. No. at 59. In addition, the commentary for the proposed regulations implementing section 203(b)(1)(A)(i) of the Act provide that the "intent of Congress that a very high standard be set for aliens of extraordinary ability is reflected in this regulation by requiring the petitioner to present more extensive documentation than that required" for lesser classifications. 56 Fed. Reg. 30703, 30704 (July 5, 1991). Here, the Petitioner has not shown that authorship of six published articles is reflective of being among the small percentage at the top of her field. *See* 8 C.F.R. § 204.5(h)(2).

As authoring scholarly articles is often inherent to the work of scientists and researchers, the citation history or other evidence of the influence of her articles can be an indicator to determine the impact and recognition that her work has had on the field and whether such influence has been sustained. For example, numerous independent citations for an article authored by the Petitioner may provide solid evidence that her work has been recognized and that other researchers have been influenced by her work. Such an analysis at the final merits determination stage is appropriate pursuant to *Kazarian,* 596 F. 3d at 1122. Here, the Petitioner offered evidence that her articles have been cited approximately 90 times[1], with her highest cited article cited approximately 58 times and her remaining articles cited 10 times or less. She did not, however, establish that such rates of citation are sufficient to demonstrate a level of interest in her field commensurate with sustained national or international acclaim. Moreover, the Petitioner has not shown that citations to her research and work reflect original contributions of major significance in the field.

In addition, the record contains evidence relating to the "impact factors" and "citation rankings" of the journals that published her papers. For example, [redacted] impact factor is 11.711 and ranked 4 out of 76 similar publications. That a publication 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 or how an author's research has had an impact within the field. Here, the Petitioner has not demonstrated that her six published papers published in professional journals places her among the small percentage at the very top of her field or demonstrates sustained national or international acclaim. 8 C.F.R. § 204.5(h)(2); section 203(b)(1)(A) of the Act.

[1] The Petitioner claims that "her current citation [is] over 145 count (50% increase of [sic] since her 2016 submission of the I-140 petition)." Although the Petitioner provides a self-compiled graph of her citations for each of her papers, she does not supplement the record with documentation supporting her assertions. Moreover, the Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1).

Although the Petitioner provided evidence of the citations to her work, she argues that "[r]ecent research has confirmed that there is no linear or other statistical relationship between the number of publications and citations and their scientific value and impact." The Petitioner submits articles and documentation in which the authors opine that "[c]itation rates and journal impact factors are not suitable for evaluation of research." For instance, indicates that "[i]nstead of the total number of citations, which has been traditionally used as a measure of the impact of an article, the proposed measure aims at discerning the genuine number of *people* the paper has had an impact upon" (emphasis in original). Furthermore, states that "citation rates are determined by so many technical factors that it is doubtful whether pure scientific quality has any detectable effect at all." Notwithstanding that the Petitioner originally argued the significance of her citations, she has not offered an alternative argument on appeal or provided different documentation showing that her research places her among the small percentage at the top of her field. *See* 8 C.F.R. § 204.5(h)(2). Moreover, the Petitioner has not shown the "number of people" impacted by her research, as indicated by Mr. Aragon.

Again, while citations are not the only way to gauge the importance or recognition of an individual's work, the record does not otherwise demonstrate that the Petitioner's work has been considered significant and garnered acclaim in the field. The record contains recommendation letters that discussed the Petitioner's research impact on the authors' own work but do not show that it rises to a level of original contributions of major significance in the field or that it has garnered sustained national or international acclaim. For example, stated that the Petitioner's "work served as a foundation for part of our studies," indicated that the Petitioner's "findings impacted my research directly and very significantly," and claimed that the Petitioner's "research contributed significantly to our research."[2] Although the letters praise the Petitioner's research in assisting them in their own research, they do not show how her contributions have greatly influenced the overall field, reflecting that her original contributions have been of major significance and have garnered attention at a level among that small percentage at the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2). Although the authors indicate that the Petitioner's work is "pioneering" and "important" as shown by the publication of her work in scientific journals that has been discussed and analyzed above, they do not establish majorly significant contributions to the greater field receiving widespread attention.

The record as a whole, including the evidence discussed above, does not establish the Petitioner's eligibility for the benefit sought. The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields. USCIS has long held that even athletes performing at the major league level do not automatically meet the statutory standards for classification as an individual of "extraordinary ability." *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994). While the Petitioner need not establish that there is no one more accomplished to qualify for the classification sought, we find the record insufficient to demonstrate

[2] While we discuss a sampling of the Petitioner's letters, we have reviewed and considered each one.

that she 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 her eligibility as an individual of extraordinary ability.

ORDER: The appeal is dismissed.

Cite as *Matter of U-S-*, ID# 1319853 (AAO May 30, 2018)