MATTER OF A-C-

DATE: OCT. 1, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a molecular biologist, 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
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> (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 he or she is able to demonstrate that the standards at 8 C.F.R. § 204.5(h)(3)(i)-(x) do not readily apply to the individual'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 post-doctoral researcher at [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 served on the editorial board for journals and as a peer reviewer of manuscripts. In addition, he authored scholarly articles in professional publications. Accordingly, we agree with the Director that the Petitioner fulfilled 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 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 maintains that he "discovered a natural bioactive substance that prevents the growth of bacteria by attaching to enzyme sites that are different from the enzyme sites used by standard antibiotics." 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. Although the Petitioner provided evidence reflecting the originality of his work through co-authored publications reporting his findings, he has not demonstrated that the field views his discovery as being majorly significant.

The Petitioner contends that his "discovery for his field has led numerous independent research teams to use his work as a foundation for their own explorations." He references three articles from *Organic Letters*, *Angewandte Chemie International Edition*, and *Molecular Cell*, which cited to his co-authored papers.[1] The Petitioner argues that these articles discuss the "urgent" need to develop antibiotic resistance and then cite to his research as "an excellent target for the necessary drug development." The articles reference the Petitioner's work as evidence of recent research and justification for the authors' approaches and reasoning. While the articles indicate that the authors' own research built upon the Petitioner's work, as well as the work of the other cited scientists, he did not demonstrate that the overall field views his findings as being majorly significant.[2] The Petitioner, for example, did not establish that antibiotic resistant drugs were developed as a result of his research, that his work had a widespread impact, or that it substantially influenced the nature or direction of research being conducted on the subject. Although the citation of his written material signifies its use by the citing authors, the Petitioner did not establish that his scholarly articles and research have risen to a level of "major significance" consistent with this regulatory criterion.

In addition, the Petitioner argues that his cumulative work had been cited 305 times at the time of filing and has now been cited 333 times, and that publication "in journals of immense global prestige is also strong evidence of the major significance of his findings." The 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.[3] Rather, the 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.

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[1] The record reflects that the Petitioner has authored six papers in professional journals.

[2] *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).

[3] The Petitioner previously provided a screenshot from Google Scholar reflecting other scientists in his field garnered citations from 10,174 to 56,749.

Further, the Petitioner contends that three of his "articles rank among the top 10% most cited articles across his entire discipline for their respective years of publication" and his "*Science* article is in the 98th percentile compared to Medicine articles of the same age and type" (emphasis omitted). In addition, he submits evidence that six of his papers were cited 125, 91, 91, 21, 4, and 1 time(s) respectively. 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 findings, factoring in citations and other corroborating evidence, have been considered important at a level consistent with original contributions of major significance in the field. 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. As discussed above, although citations show that his research has received attention from the field, the Petitioner did not demonstrate that the citations to his individual papers demonstrate their "major significance."

In addition, the Petitioner maintains that a report of the Petitioner's *Science* article by the [redacted] "covers the significance of his findings for the future of medical antibiotics." The record contains a screenshot from [redacted] reporting on the findings from the article. However, the screenshot speculates of the prospective potential impact of the Petitioner's research. For instance, the article quotes [redacted] scientists who state that "[t]heir application in the fight against those bacteria that have evolved resistance to traditional antibiotics opens up a world of possibilities in terms of new drug design," "[t]he substances cannot in their current form be used as drugs quite yet," and "we have to first continue to fine-tune their integration into potential new drugs." The Petitioner argues that "short-sighted analyses that acknowledge major significance in only scientific advances that yield *immediate* therapeutic benefit" (emphasis in original) must be avoided. However, the actual present impact of the Petitioner's work has not been established. Here, the article reports on how his findings may affect the field at some point in the future, but does not demonstrate that the current impact of his work rises to a level of "major significance" as required. While the screenshot reports on the Petitioner's published article and the relationship to [redacted] original identification of the substances, he did not demonstrate how his work already qualifies as a contribution of major significance in the field.

Moreover, he argues that he has been funded three times by the [redacted] and provides statistics relating to the competitiveness of securing grants. Receiving funding to conduct research is not a contribution of major significance in-and-of itself. Rather, the Petitioner must establish that receiving the grant is reflective of his past work's major significance, or that his research conducted with the [redacted] grant resulted in a contribution of major significance in the field. The record contains two recommendation letters confirming that the Petitioner's "contributions directly led to the obtainment of [redacted] funding." The letters, however, do not sufficiently illustrate how the funding reflects the importance of the Petitioner's contributions, nor do they indicate the research results of the [redacted] funding and whether they are majorly significant 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).

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 work 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 A-C-*, ID# 1652028 (AAO Oct. 1, 2018)