U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF A-T-

DATE: APR. 3, 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner seeks classification as an individual of extraordinary ability in the field of anesthesiology. *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 petition, concluding that the Petitioner had satisfied two of the initial evidentiary criteria, of which he must meet at least three.

On appeal, the Petitioner contends that he meets two other criteria, relating to making original contributions of major significance in the field, 8 C.F.R. § 204.5(h)(3)(v), and performing in a leading and critical role, 8 C.F.R. § 204.5(h)(3)(viii). He maintains that he qualifies for the classification.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 203(b)(1)(A) of the Act makes visas available to certain immigrants 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 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 the petitioner does not submit this evidence, then he or she must provide documentation that meets at least three of the ten criteria listed under 8 C.F.R. § 204.5(h)(3)(i)-(x) (including items such as qualifying awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the submitted material in a final merits determination and assess whether the record, as a whole, 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, 1119-20 (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, 1343 (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 indicates that he is an anesthesiologist who has training in adult neurosurgical anesthesiology and pediatric neuroanesthesiology, and is qualified to conduct intraoperative neurophysiological monitoring. The record shows that he has a doctor of medicine degree and a degree of bachelor of medicine and bachelor of surgery. His resume states that he has worked as a professor of anesthesiology in India, a staff fellow physician anesthesiologist at the and as well as a medical director for , a subsidiary of

The Director concluded that the Petitioner meets the participation as a judge criterion under 8 C.F.R. § 204.5(h)(3)(iv) and the authorship of scholarly articles criterion under 8 C.F.R. § 204.5(h)(3)(vi). The record supports this conclusion. The Petitioner has presented documentation from the *Journal of Anaesthesiology Clinical Pharmacology* and the *Journal of Obstetric Anaesthesia and Critical Care*, professional publications, confirming that he served as their reviewer and reviewed manuscripts between 2006 and 2017. In addition, the record confirms that he has authored scholarly articles that are published in professional journals, including that appeared in the *Journal of Anaesthesiology Clinical Pharmacology*, and that appeared in the *Indian Journal of Urology*. While the Petitioner has satisfied two criteria under 8 C.F.R. § 204.5(h)(3)(iv) and (vi),

as we will explain below, he has not met the initial evidence requirements of satisfying at least three criteria.[1]

> *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).

To satisfy this criterion, the Petitioner must establish that not only has he made original contributions but that they have been of major significance in the field of anesthesiology. Major significance in the field may be shown through evidence that his research findings or original methods or processes have been widely accepted and implemented throughout the field, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance in the field. *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/sites/default/files/USCIS/Laws/Memoranda/i-140-evidence-pm-6002-005-1.pdf.

The record is insufficient to demonstrate, by a preponderance of the evidence,[2] that the Petitioner has satisfied the criterion under 8 C.F.R. § 204.5(h)(3)(v). On appeal, the Petitioner claims that he meets this criterion because his articles have appeared in "some of the most prestigious journals in the field"; other scientists have cited to and relied on his findings; the [redacted] has referenced his research in its guidance to medical professionals; he has collaborated with [redacted] to develop monitoring software, and the field of anesthesiology has shown interest in his [redacted] device.

The Petitioner's written work and citation frequency are insufficient to satisfy this criterion. According to a statement he initially submitted in support of the petition, he has "published about 50 peer-reviewed publications that include original research manuscripts, review articles, case reports and peer-reviewed abstracts" and that his articles have appeared in "some top-ranking journals." Evidence of publication in respectable journals and presentation in reputable forums shows that the Petitioner has shared his research. To satisfy this criterion, he must establish that the reaction from the field upon the dissemination of his work confirms that the value of his research rises to the level of "contributions of major significance" in the field, as required under 8 C.F.R. § 204.5(h)(3)(v).

The Petitioner asserts that his citation frequency establishes that he meets this criterion. He offers documents from Clarivate Analytics, listing "baselines-citation rates" for clinical medicine. He, however, has not explained how citation information about clinical medicine relates to his contributions in anesthesiology, the field in which he claims extraordinary ability. Similarly, the record includes documents relating to citation percentile in the research area of "anesthesia, intensive

[1] The Petitioner has not alleged, and the record does not demonstrate, that he has received a major, internationally recognized award. *See* 8 C.F.R. § 204.5(h)(3). As such, he must provide documentation that meets at least three of the ten criteria listed under 8 C.F.R. § 204.5(h)(3)(i)-(x) to satisfy the initial evidence requirements.

[2] If a petitioner submits relevant, probative, and credible evidence that leads U.S. Citizenship and Immigration Services (USCIS) to believe that the claim is "more likely than not" or "probably true," the petitioner has satisfied the "preponderance of the evidence" standard of proof. *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 4.

care medicine, medicine, surgery," but they do not specifically list information about his contributions in the field of anesthesiology.

Regardless, the Petitioner has not shown that the number of citations his work has garnered confirms his research qualifies as contributions of major significance in the field. On appeal, he submits a Google Scholar printout, indicating that his most cited article, published in 2013, received 74 citations, and his second most cited article, published in 2002, received 39 citations.[3] The printout reveals that many of his articles have not garnered any citation. According to a letter from the editor-in-chief of , the Petitioner's 2013 article was the journal's second most cited article. The evidence shows that the journal's h5-index and h5-median, which relate to its standing in the field, are relatively low as compared to the top ten publications in anesthesiology. Evidence regarding the Petitioner's citation rate does not confirm that his articles "have provoked widespread commentary or received notice from others working in the field, or entries (particularly a goodly number) in a citation index which cite [his] work as authoritative in the field." USCIS Policy Memorandum PM 602-0005.1, *supra*, 8.

Although the Petitioner has submitted some examples of other scientists citing to and relying on his research, he has not demonstrated that his articles have been cited as authoritative in the field or have influenced the field in a significant way. He offers incomplete copies of articles that cite to his studies, but these documents reference his work among many other studies, and do not include an in-depth discussion about his research. For example, the 2017 article cites one of his articles among at least 108 other sources, and the 2016 article cites his work among at least 52 studies. The Petitioner has not shown that his findings are authoritative or have otherwise risen to the level of contributions of major significance in the field.

Similarly, the record is insufficient to confirm that the Petitioner's research on fatigue in anesthesia practice qualifies as contributions of major significance in the field. He has submitted an document entitled This document cites two of the Petitioner's articles, among 47 studies, to support the proposition that "[t]he consequences of fatigue have serious implications for patient safety and the overall wellness of anesthesia professionals." It advises that "[m]anaging fatigue has the potential to improve the quality of patient care and outcomes to spur excellence in clinical and professional practice." The Petitioner has not established that references to his research in the document or other articles are indicative of his work's significant impact in the field. Rather, these publications acknowledge that his studies have added to the general pool of knowledge, which, without evidence of significant influence in the field, is insufficient to satisfy this criterion.

Furthermore, while the record shows that the Petitioner was involved with inventing which, according to a consultant anesthetist at the is "a fluid delivery system . . . that reduces harmful effects by preventing the medical errors from occurring," he has not shown that has been widely used in the field. a professor in the Department of Anesthesiology in the at

[3] According to an article " " which the Petitioner offers on appeal, the citation frequency referenced in Google Scholar might include citations in non-scholarly writings.

[redacted] states that [redacted] "represent[s] the categories of drugs most commonly used in anesthesia: [redacted] drugs." [redacted] explains that the "product contains seven syringe ports" that "interlock with only one designated syringe," which "allows the medical provider to assure that the syringe contains the correct drug and is correctly administered intravenously." The Petitioner, however, has not presented evidence verifying that his invention has been widely used in the field. Rather, according to two 2017 email correspondence in the record, researchers could not confirm if [redacted] had ever been tested or used in a clinical setting. The evidence therefore does not establish that his invention constitutes contributions of major significance in the field.

While the record includes an unsigned agreement between [redacted] and the Petitioner, it does not show that he is "collaborat[ing] with a major American company, [redacted] regarding the development of next-generation monitoring software for patients under anesthesia," as he has claimed in the appellate brief. The unsigned agreement specifies the rights and obligations of the parties regarding the use of [redacted] data communication protocols for the exchange of data between [redacted] products and third party medical equipment. It does not discuss the Petitioner's work or impact in the field of anesthesiology.

Finally, the reference letters in the record similarly are insufficient to demonstrate that the Petitioner has made original contributions of major significance in the field. *See* 8 C.F.R. § 204.5(h)(3)(v).[4] Some of these letters discuss in detail the nature of the Petitioner's work, claiming he has advanced the field. For example, the record includes letters from [redacted], a professor of anesthesiology in the School of Medicine at the [redacted] in New Zealand; [redacted], a professor in the Department of Neurosurgery at the [redacted] and [redacted], a professor of women's health at the [redacted] These letters state that other scientists have cited to and relied on the Petitioner's work. The letters, however, are insufficient to confirm that his impact or influence in the field has risen to the level of "major significance." *See Kazarian*, 596 F.3d at 1122 (finding that "letters from physics professors attesting to [a petitioner's] contributions in the field" were insufficient to meet this criterion). The Petitioner has not demonstrated that his work – which may have resulted in incremental advancements in the field, as such are expected in any original research – qualifies as contributions of major significance in the field. *See* USCIS Policy Memorandum PM-602-0005.1, *supra*, at 8-9 ("Letters that lack specifics and simply use hyperbolic language do not add value, and are not considered to be probative evidence that may form the basis for meeting this criterion.").

The above and other letters not specifically discussed, as well as other evidence in the record, show that the Petitioner's work has added to the general pool of knowledge in the field. They are, however, insufficient to confirm widespread commentary and acceptance of his work, or that the field of anesthesiology has regarded his research as authoritative. *See Visinscaia*, 4 F. Supp. 3d at 134-35 (upholding a finding that a ballroom dancer had not met this criterion because she did not demonstrate her impact in the field as a whole). Letters that repeat the regulatory language but do not sufficiently explain how an individual's contributions have already influenced the field significantly are insufficient to satisfy this criterion. *See Kazarian v. USCIS*, 580 F. 3d 1030, 1036 (9th Cir. 2009), *aff'd in part*, 596 F. 3d 1115, 1122 (9th Cir. 2010). Based on the evidence in the record, the Petitioner

[4] While not every letter in the record is discussed, all were considered in reaching our conclusion.

has not shown, by a preponderance of the evidence, that he has made original contributions of major significance in the field of anesthesiology.

> *Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.* 8 C.F.R. § 204.5(h)(3)(viii).

On appeal, the Petitioner maintains that he satisfies this criterion based on the work he has performed for his employer, [redacted].[5] For a leading role, the evidence must establish that the petitioner is or was a leader. *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 10. If the petitioner claims to have performed a critical role, he or she must establish that the role is or was of significant importance to the outcome of the organization or establishment's activities. A supporting role may be considered "critical" if the petitioner's performance in the role is or was important in that way. It is not the title of the petitioner's role, but rather his or her performance in the role that determines whether the role is or was critical. *Id.*

According to an August 2018 letter from [redacted] the Petitioner serves as the medical director for [redacted], a subsidiary of [redacted] The letter describes his duties and work for [redacted] and sufficiently shows that he performs a leading and critical role for his employer.

The record, however, is insufficient to demonstrate that [redacted] qualifies as an organization or establishment that has a distinguished reputation, as required under 8 C.F.R. § 204.5(h)(3)(viii). According to a [redacted] 2018 *Tech Journal Hub article*, [redacted] and approximately 20 other companies are "top players" in the global intraoperative [redacted] market. A 2015 *NFIB* article calls [redacted] one of "the top five companies in the nation in their field." [redacted] claims that [redacted] is its most productive subsidiary and is affiliated with more than 50 hospitals. The record includes a list of locations where [redacted] offers its services, and a document showing that the [redacted] awarded contracts to [redacted] While these documents verify that [redacted] is active in the market, they are insufficient to establish that it has a distinguished reputation. The Petitioner has not pointed to any legal authority to support a position that "distinguished reputation" under 8 C.F.R. § 204.5(h)(3)(viii) can be shown through a company's size and clients.

The Petitioner has also submitted an article posted on the [redacted] website, noting that [redacted] and other companies donated to a surgical mission trip to India. The Petitioner, however, has not demonstrated that this information, which relates to the company's one act of generosity, is sufficient to confirm that his employer has a "distinguished reputation." In light of the above, the Petitioner has not satisfied this criterion because he has not presented "[e]vidence that [he] has performed in a leading or critical role for organizations or establishments that have a distinguished reputation." *See* 8 C.F.R. § 204.5(h)(3)(viii).

[5] While the record appears to show that the Petitioner works for [redacted] in addition to its subsidiary, [redacted], in his appellate brief, he has not alleged that he performs in a leading or critical role for [redacted] We will therefore focus our discussion on his role for [redacted]

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, upon a review of the record in its entirety, we conclude that it does not support a finding that he has established the acclaim and recognition required for this classification.

The Petitioner seeks a highly restrictive visa classification, intended for individuals who are 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 academic, scholarly, research, and professional accomplishments 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; 8 C.F.R. § 204.5(h)(2).

The record does not establish that the Petitioner qualifies for classification as an individual of extraordinary ability. The appeal will therefore be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012). Here, that burden has not been met."

ORDER: The appeal is dismissed.

Cite as *Matter of A-T-*, ID# 2607377 (AAO Apr. 3, 2019)