U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 4951737

Date: DEC. 19, 2019

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Extraordinary Ability)

The Petitioner, a researcher in biomedical engineering, seeks classification as an alien of extraordinary ability. *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 Texas Service Center denied the petition, concluding that the Petitioner had satisfied only two of the initial evidentiary criteria, of which he must meet at least three.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 203(b)(1) 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 a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the recognition of his or her achievements in the field through 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 sufficient qualifying 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).

II. ANALYSIS

The Petitioner indicated employment as a postdoctoral fellow at [redacted] University School of [redacted] pursuing research on using new [redacted] technology to correct mutations that cause disease. The record shows that gene therapy for the treatment of congenital diseases is a rapidly growing field, and the development of new [redacted] agents is an important topic of current research internationally.

Because the Petitioner 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 determined that the Petitioner fulfilled two of the initial evidentiary criteria, judging at 8 C.F.R. § 204.5(h)(3)(iv) and scholarly articles at 8 C.F.R. § 204.5(h)(3)(vi). The record reflects that the Petitioner reviewed papers for journals. In addition, the Petitioner has 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 asserts that he meets an additional evidentiary criterion, discussed below. After reviewing all of the evidence in the record, we conclude that the record 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 argues that the Director did not consider all of his documentation and mischaracterized some of the evidence submitted. He contends that the testimonial letters, citations to his work, and commercialization of and licensing interest in his work demonstrate his eligibility for this criterion. 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.[1] For example, a petitioner may show that the contributions have been widely implemented throughout the

[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 (finding that although funded and published work may be "original," this fact alone is not sufficient to establish that the work is of major significance).

field, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance in the field.

The Petitioner references his submission of letters from colleagues and other scientists and experts regarding his original contributions in his field.[2] The letters summarize the Petitioner's research achievements and broadly discuss the potential impact of his research in the fields of biomedical engineering and gene therapy. However, they do not establish that his original contributions are already recognized as majorly significant within these fields.

For example, , the Petitioner's doctoral advisor at the University of reviews some of the findings of the Petitioner's doctoral research involving the nanoparticle complexes used in gene therapy applications. He credits the Petitioner's research in gene therapy with having "identified a new, two-pronged strategy in which is delivered using one type of nanoparticle and then intracellular release of the cargo is triggered by a separate agent." He lists several scientific teams that have cited to the Petitioner's work, including from Brazil who "describe an application of a two-pronged delivery strategy similar to [the Petitioner's] work." He states that the Petitioner's work provides new insights into the properties of nanoparticles.

the Petitioner's current postdoctoral mentor at explains that the Petitioner's main area of research in the field of gene therapy involves the use of the protein to correct mutations in the gene that causes He indicates that the Petitioner has worked to optimize the ability of to be delivered into airway stem cells by modifying culture conditions, and has designed correction sequences for nearly 100% of mutations that cause states that the Petitioner's leadership of the editing group for at was critical for securing a $1.5 million research grant from the and $1 million in additional private funding. He praises the Petitioner's "leadership in developing a creative and novel approach to potentially curing a devastating genetic disease." He indicates that the Petitioner has published 10 journal articles, in highly-ranked journals such as *Molecular Pharmaceutics*, that have received 118 citations in total, which he characterizes as "a respectable amount for any scholar, and an impressive number among his peers in the field." However, the record does not support a finding that the Petitioner's research findings, while original, are already recognized as a contribution of major significance in the field.

also provides that the Petitioner has been part of 's collaboration with to improve *in vivo* gene therapy, and the Petitioner's ongoing research has been used by to market the variants that he identified. The record includes a letter from senior director of R&D, confirming that the company "commercialized products based on [the Petitioner's] research involving variants," and a letter from expressing interest in licensing some of the Petitioner's work. However, the Petitioner has not provided evidence that the marketed research findings of the Petitioner, or the evidence of interest in licensing his work, have already affected the field of biomedical engineering or gene therapy, so that we can conclude that the Petitioner's research contribution has had a significant influence on his field.

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

[redacted], a postdoctoral research scientist at the University of [redacted] states that his team has cited to the Petitioner's research findings and indicates that the Petitioner's "information on the behavior of nanoparticles within human cells" was "instrumental" in aiding their experiment's success. [redacted] a professor of chemistry at the University of [redacted] and CEO o[redacted] asserts that the Petitioner's work indicating that the presence of the[redacted] may affect the behavior of the studied nanoparticles "highlights a significant vulnerability of conventional research methods to characterize the biological activity of nanoparticle-based therapies." [redacted] a professor of chemical engineering a[redacted] University, states that he has previously cited to the Petitioner's work on multiple occasions, and asserts that the Petitioner's research "provides critical information for the further development of [redacted] agents necessary to advance gene therapy."

Within the Petitioner's response to the Director's request for evidence (RFE), he provided a letter from [redacted] a professor of pediatrics and genetics at [redacted] University and co-chair of the [redacted] Foundation Grants Review Committee. He explains that although [redacted] gene editing has been attempted, "the inability to achieve high levels of gene correction in airway stem cells has prevented the clinical applicability of the technology to cure[redacted]." He indicates that the Petitioner's work is significant because he has successfully developed methods that achieve a high level of correction of a common [redacted] mutation, [redacted], when compared to previous attempts.

Overall, the letters recognize the originality, importance, and prospective benefit of the Petitioner's work, but do not contain detailed information showing the unusual influence or high impact the Petitioner's contributions have already had on the overall field. These and other letters not specifically mentioned, as well as other evidence in the record, show that the Petitioner's original work has added significant value to the pool of knowledge in his field and opened avenues for further [redacted] gene therapy research. The evidence, however, is insufficient to confirm that the level of attention he has received reflects widespread commentary and acceptance of his work, or that the field of biomedical engineering or gene therapy has regarded his research as authoritative. Here, the Petitioner's letters do not contain specific, detailed information explaining the unusual influence or high impact his research or work has had on the overall field. Letters that specifically articulate how a petitioner's contributions are of major significance to the field and its impact on subsequent work add value.[3] On the other hand, letters that lack specifics and use hyperbolic language do not add value, and are not considered to be probative evidence that may form the basis for meeting this criterion.[4] 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).

In addition, within the Petitioner's RFE response, he submitted updated information from *Google Scholar* reflecting 159 cumulative citations to his published research. The Petitioner maintains that his two highest cited articles in 2016 earned more than the average number of citations for articles in the same field, published the same year, placing them among the "**top 10% most cited** papers across the entire field for their years of publication." The Petitioner's evidence in support of this claim

[3] *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8-9.

[4] *Id.* at 9. *See also Kazarian*, 580 F.3d at 1036, *aff'd in part*, 596 F.3d at 1115 (holding that 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).

included a printout from *Incites Essential Science Indicators* by Thomson Reuters, showing a table of "Baseline-Citation Rates" for papers published by field for 2008-2018. The line for "Molecular Biology and Genetics" indicated that the documented citations of the Petitioner's two highest cited articles in 2016, cited 26 and 19 times, respectively, do, as claimed, exceed the 7.99 average citations for that year in that field. Regardless, the comparative ranking to baseline or average citation rates does not automatically establish majorly significant contributions in the field. Once again, the issue for this criterion is whether the Petitioner has made original contributions of major significance in the field rather than where his citation rates rank among others in his field. Here, a more appropriate analysis, for example, would be to compare the Petitioner's citations to other similarly, highly cited articles that the field views as having been of major significance, as well as factoring in other corroborating evidence. The Petitioner has not demonstrated, as he asserts, that his published articles through citation numbers and percentiles resulted in an original contribution of major significance in the field. [5]

The Petitioner also submitted articles and excerpts of articles that cited to his work as evidence that he has made original contributions of major significance in the field. A review of the sample articles, though, does not show the significance of the Petitioner's research to the overall field beyond the authors who cited to his work.[6] For instance, the Petitioner provided an article titled [redacted] (*Journal of Polymer Science, Part A: Polymer Chemistry*), in which the authors cited to his 2016 *Accounts of Chemical Research* article.[7] However, the article does not distinguish or highlight the Petitioner's written work from the 63 other cited papers. In the case here, the Petitioner has not shown that his published articles through citations rise to a level of "major significance" consistent with this regulatory criterion.

Further, the Petitioner states that his articles have been published in leading outlets in his field, including *Accounts of Chemical Research, ACS Nano, Soft Matter,* and *Journal of Physical Chemistry C*. This claim appears to be based on data compiled by Google Scholar and from "Impact Factor" data provided by the journals' own websites. However, the Petitioner has not demonstrated that publication of his articles in highly ranked journals establishes that the field considers his research to be an original contribution of major significance. Moreover, a publication that bears a high ranking or impact factor is reflective of the publication's overall citation rate. It does not show an author's influence or the impact of research on the field or that every article published in a highly ranked journal automatically indicates a contribution of major significance. Publications 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 at 1036, *aff'd in part*, 596 F.3d at 1115. Here, the Petitioner has not established that publication in a popular or highly ranked journal alone demonstrates a contribution of major significance in the field.

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[5] *Id.* at 8-9. (providing an example that peer-reviewed articles in scholarly journals that 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 the individual's work as authoritative in the field, may be probative of the significance of the person's contributions to the field of endeavor).

[6] *Id.* at 8-9; *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 134-35 (D.D.C. 2013) (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).

[7] Although we discuss a sample article, we have reviewed and considered each one.

For the reasons discussed above, considered both individually and collectively, the Petitioner has not shown 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). Although the Petitioner has reviewed papers for journals and has authored scholarly articles, the Petitioner has not established that his professional accomplishments have placed him among the upper level of his field.

For the reasons discussed above, the Petitioner has not demonstrated his eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.