U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF L-D-

DATE: FEB. 19, 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, an electrical engineer, 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
>
> (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 senior staff engineer at [redacted] in [redacted] California. 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 as a peer reviewer of manuscripts for journals. 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.

A. Evidentiary 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).

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. Here, we will address the Petitioner's arguments on appeal and determine whether he has shown original contributions of major significance in the field consistent with this regulatory criterion.

The Petitioner contends that he "has submitted evidence of numerous individual citations of his work that emphasize the major significance of his research." Specifically, the Petitioner generally references to his previously offered samples of research articles that cited to his work. For instance, the Petitioner provided a partial article entitled, [redacted] in which the authors cited to his 2007 *Journal of Applied Physics* article.[1] However, the article does not distinguish the Petitioner's written work from the other 424 cited papers. Further, the sample articles do not show the significance of the Petitioner's research to the overall field beyond the authors who cited to his work.[2] 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.

Likewise, the Petitioner maintains that his "research was also acknowledged in a book chapter titled [redacted] and "the fact that these authors chose to dedicate so much attention to [the Petitioner's] work is a clear sign that his research is of major importance to the field at large." The record contains excerpts of the book chapter; however, the evidence does not support the Petitioner's assertion that the authors "dedicate[d] so much attention" to his work. The passages provided by the Petitioner show that the authors devoted three sentences and used two figures in citing to his 2005 [redacted] article; the book chapter is not about the Petitioner's written article of research. Regardless, the Petitioner has not established that a single book chapter, which cites to an article, is indicative of a contribution of major significance to the overall field.

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

[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).

In addition, the Petitioner argues that "leading researchers such as [redacted] have repeatedly and significantly relied on his work in their own pioneering research studies." The Petitioner offered a recommendation letter from [redacted] who indicated that he applied the Petitioner's research to four of his own studies.[3] For example, [redacted] stated that "[m]y study is therefore a key point of reference for other electrical engineering researchers, and [the Petitioner's] research laid the foundation of my project," and "[m]y success in this regard owed greatly to [the Petitioner's] previous research, since I applied his effective medium theory to my investigation." While [redacted] praises the Petitioner and credits him for assisting in his own research and work, he did not demonstrate how the Petitioner's research has greatly impacted the overall field.

Further, the Petitioner contends that the Director improperly indicated his citations to other researchers and engineers who submitted recommendation letters on his behalf.[4] Moreover, the Petitioner claims that the Director imposed a threshold number of total citations that is apparently required to demonstrate major significance. In general, the comparison of the Petitioner's cumulative citations to others in the field is often more appropriate in determining whether the record shows sustained national or international acclaim and demonstrates that he is among the small percentage at the very top of the field of endeavor in a final merits determination if the Director determined he met at least three of the regulatory criteria. *See Kazarian* 596 F.3d at 1115. However, the comparison of citations to a particular scientific article may be relevant for this criterion in order to establish the field's general view of a contribution of major significance.

Again, this criterion requires the Petitioner to establish that he has made original contributions of major significance in the field. Thus, the burden is on the Petitioner to identify his original contributions and explain why they are of major significance to the field. As the Petitioner has submitted evidence of his citation history from *Google Scholar*, he must show how those citations qualify as contributions of major significance. For instance, as indicated, the Petitioner presented evidence reflecting that his highest cited article received 121 citations at initial filing. In this case, however, the Petitioner did not articulate the significance or relevance of that number.[5] Although his citations are indicative that his research has received some attention from the field, the Petitioner did not demonstrate that this citation number reflects that his article has been majorly significant to the field.[6] Generally, citations can serve as an indication that the field has taken interest in a petitioner's

[3] While we address [redacted] letter, we have reviewed and considered his other recommendation letters included in the record.

[4] For instance, the Director compared the Petitioner's citations (1,310 total citations and 121, 64, and 63 for his highest three cited articles) to [redacted] (12,665 total citations and 1,368 for his highest citation article), [redacted] (8,419 total citations and 832 for his highest cited article), and [redacted] (21,459 total citations and 2,785 for his highest cited article).

[5] As discussed by the Director, the record appears to reflect that the Petitioner's field contains articles that have been cited in the thousands.

[6] *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, 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).

work. The Petitioner, however, has not sufficiently identified the specific contributions he has made through his written work, nor has he shown that his citations for any of his published articles are commensurate with contributions of major significance.

In addition, the Petitioner provided data from Clarivate Analytics regarding baseline citation rates and percentiles by year of publication for various research fields. The Director found CA's information to be "out-of-date" and "highly skewed."[7] On appeal, the Petitioner provides evidence showing that the data is updated bi-monthly and an email from a representative of CA who explained that "[t]he word skew simply describes a natural phenomenon of citation distributions: a few papers receive many cites, whereas most papers receive few or no cites" and "[t]here is no 'thumb on the scale' here, no skew, no inflation of an individual researcher's credentials into the top 10 percentile or deflation out of the top 10 percentile." Further, the Petitioner presents a document that appears to be self-compiled entitled "In-Field Author Comparator" regarding to his citation count percentiles and paper count percentiles. The Petitioner claims that the data was derived from "Microsoft Research" and compares his research impact to that of other researchers in electrical engineering, microelectronics, and photonics. Specifically, the Petitioner asserts that "Microsoft Research data establishes that [he] is among the top 0.08% of researchers in the field in terms of citation impact and the top 0.05% of researchers in the field of research productivity."

The comparative ranking to baseline or average citation rates, however, does not automatically establish majorly significant contributions to the field. Moreover, as discussed, the comparison of the Petitioner's cumulative citations to others in the field is more relevant in a final merits determination. 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. 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.

Moreover, the Petitioner maintains that [redacted] implemented his technology and references a letter from [redacted] integrated photonics engineering manager, who indicated that the Petitioner developed a silicon photonics platform, which [redacted] later licensed, and claimed that "[b]ecause of [the Petitioner's] research, we have been able to transform the industry of optical communication." Similarly, the Petitioner offered a letter from [redacted] deputy executive director at the [redacted] who also stated that the Petitioner contributed to the development of the silicon photonics platform and "this technology has been licensed to over a dozen companies across the world." While the Petitioner presented evidence of

[7] According to the CA documentation submitted by the Petitioner, "[c]itation frequency is highly skewed, with many infrequently cited papers and relatively few highly cited papers. Consequently, citation rates should not be interpreted as representing the central tendency of the distribution."

licensing payments, he did not show that his silicon photonics platform is viewed by the greater field as a contribution of major significance. The Petitioner's letters do not contain specific, detailed information explaining the unusual influence or high impact the platform has had on the overall field without violating any confidentiality agreements. In addition to providing broad attestations, they do not show why it has been considered of such importance and how its impact on the field rises to the level required by this criterion. Letters that specifically articulate how a petitioner's contributions are of major significance to the field and its impact on subsequent work add value.[8] 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.[9] 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 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.

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 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 acclaim and recognition required for the classification sought.

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

[9] *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).

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 L-D-*, ID# 2091154 (AAO Feb. 19, 2019)