U.S. Citizenship
and Immigration
Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF S-D-

DATE: JAN. 18, 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 applied physics. *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 presents additional evidence, contending that he meets a third criterion, relating to original contributions of major significance in the field, 8 C.F.R. § 204.5(h)(3)(v), and 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 record, including the Petitioner's resume, shows that he received his Ph.D. degree in physics in 2013, worked as a postdoctoral research associate between 2014 and 2017, and has been employed as an engineer by since 2017. According to a letter from his employer, he "applies his expertise in applied physics and materials engineering to nanoelectronics and optoelectronic device fabrication and manufacturing in this research-and-development based position."

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 under 8 C.F.R. § 204.5(h)(3)(vi). The record supports this conclusion. The Petitioner has presented evidence, including documentation from *Applied Physics Letters*, a professional publication, confirming that he served as its reviewer and reviewed manuscripts in 2016 and 2017. In addition, the record establishes that he has authored scholarly articles that are published in professional journals, including that appeared in *Chemistry of Materials*, and that appeared in *Journal of Vacuum Science & Technology A: Vacuum, Surfaces and Films*. While the Petitioner has satisfied two criteria under 8 C.F.R. § 204.5(h)(3)(i)-(x), he has not met the initial evidence requirements of satisfying at least three criteria.[1]

[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

On appeal, the Petitioner maintains that he meets the criterion under 8 C.F.R. § 204.5(h)(3)(v), which requires him to present "[e]vidence of [his] original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field." 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 applied physics. 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.

The record is insufficient to establish, by a preponderance of the evidence,[2] that the Petitioner has satisfied the original contributions of major significance criterion under 8 C.F.R. § 204.5(h)(3)(v). On appeal, he claims that some of his "most notable contributions" relate to "the structural properties of liquid crystals," the "manufactur[ing] of micro- and nano-scale semiconductors," and the use of "mesoporous materials and core-shell nanoparticles . . . in alternative energy applications." Relying on evidence, including reference letters, information on the publication of and citations to his articles, his presentations, as well as research projects, he maintains that his work "has been highly beneficial to his research field" and has "led to major practical benefits for the development of next-generation optic and electronic devices, the biomedical field, and the energy sector."

The record, including printouts from scholar.google.com, indicates that the Petitioner has authored approximately 20 scholarly articles, and that his most cited work – which received 64 citations as of May 2018 – was published in 2011, before he received his Ph.D. degree. On page 12 of his appellate brief, he acknowledges "his relatively low [citation] count," but asserts that citation frequency "is indicative of his professional background, not the significance of his contributions." He further argues that "citations should not be considered the only gauge of original scientific contributions for an industry researcher like [him]." We agree with his position that citation to one's work alone is insufficient to confirm contributions of major significance in the field. However, evidence that the Petitioner's 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, may be probative of the significance of [his] contributions to the field of endeavor." USCIS Policy Memorandum PM 602-0005.1, *supra*, 8.

The Petitioner has presented citation related evidence, including Microsoft Academics Author Metrics, information on the total number of citations he has garnered, and documentation on the "baselines citation rates" of various scientific fields. These materials, while showing that he has

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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, *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* 4 (Dec. 22, 2010), http://www.uscis.gov/laws/policy-memoranda.

been a productive researcher and author who has received some attention in the field, are insufficient to confirm that he has made original contributions that rise to the level of "major significance." For example, these documents do not specifically explain the impact of each of the Petitioner's studies in the field, or establish that his findings have been widely accepted or implemented throughout the field. Indeed, the Petitioner acknowledges on page 10 of his appellate brief that "a researcher's aggregated citation count does not provide sufficient insight regarding the impact and overall significance of [his] contributions."

The Petitioner has also offered reference letters and other documentation showing that scientists from different parts of the world have cited to his articles. a professor at the discusses in his letter the Petitioner's most cited article, providing that he and other scientists have cited to the article and relied on its findings in their own studies. a professor and the Chair of Graduate Studies at the states that he and other researchers have "drawn substantial inspiration from [the Petitioner's] experiments" and relied on his findings. a professor at in Germany, indicates that his and other research groups have benefited from the Petitioner's research and scientists from different parts of the world have implemented his findings. , a professor and the Interim Dean of the College of Nanoscale Science at discussed a 2016 article that he coauthored with the Petitioner, noting that the work has garnered 8 citations as of April 2018. "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." USCIS Policy Memorandum PM-602-0005.1, *supra*, at 8-9; *see also 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).

These and other letters not specifically mentioned, 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 that the level of attention he has received reflects widespread commentary and acceptance of his work, or that the field of applied physics 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*, 580 F.3d at 1036.

Some documents in the record indicate that the Petitioner has been invited to present his findings at conferences, symposiums, and workshops. These activities, as well as the publication of his articles, illustrate that he has disseminated his work in the field. The Petitioner, however, has not submitted sufficient evidence of the impact and influence that his work has had in the field after dissemination. As such, he has not shown that his presentations satisfy this criterion. Publications and presentations are not sufficient under this criterion absent evidence that they were of "major significance" in the field. *See Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009), *aff'd in part*, 596 F.3d 1115.

In addition, the Petitioner claims that he has participated in research funded by reputable organizations. The record does not show that he had received these grants. Rather, he participated in studies that received the grants. Regardless, an award of grants or funding signifies that the award issuing organization considers the study, as proposed, to have certain level of importance. But to demonstrate that the Petitioner has satisfied this criterion, he must offer evidence that after the completion of the research, or the publication or presentation of the findings, the response to his work confirms that it has remarkably impacted or influenced the field as a whole. He has not submitted such evidence. Similarly, his work in other collaborative researches, absent evidence of substantial impact and influence in the field originating from his involvement is insufficient to meet this criterion. Every research adds information to the pool of knowledge in some way for it to be accepted for publication, presentation, or funding, but not every finding that broadens the knowledge base in a particular field is tantamount to a scientific contribution of major significance in that field. Based on the evidence in the record, the Petitioner has not shown, by a preponderance of the evidence, that he has made original contributions of major significance in the field of applied physics.

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).

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 S-D-*, ID# 1921918 (AAO Jan. 18, 2019)