U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF Q-L-

DATE: JULY 17, 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a researcher, seeks classification as an individual of extraordinary ability in the field of "Nanostructure Material Synthesis and Electrochemistry." *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, finding 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 an additional criterion, relating to original contributions of major significance in the field. *See* 8 C.F.R. § 204.5(h)(3)(v). 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's resume and other documents show that he received his Doctor of Philosophy degree in mechanical engineering from [redacted] University in Indiana in 2014. The evidence indicates that he began working as a postdoctoral research associate at the [redacted] in Illinois in November 2014.

The Director concluded that the Petitioner met 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 evidence from professional publications – including *Nano Energy*, *Journal of Materials Chemistry A*, and *Journal of Power Sources* – confirming that he has served as one of their manuscript reviewers. Additionally, the record establishes that he has authored scholarly articles that are published in professional journals. For example, *Nano Energy* published his article [redacted] and *Nature Energy* published his article '[redacted]

Although the Petitioner has satisfied two criteria under 8 C.F.R. § 204.5(h)(3)(iv) and (vi), as we will discuss below, he has not demonstrated, by a preponderance of the evidence,[1] that he meets the initial

[1] 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

evidence requirements of satisfying at least three criteria.[2] He claims that he has made original scientific contributions of major significance in the field of "Nanostructure Material Synthesis and Electrochemistry." *See* 8 C.F.R. § 204.5(h)(3)(v). The record, however, is insufficient to support this assertion.

> *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. 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, *supra*, at 8-9.

The record is insufficient to demonstrate that the Petitioner has satisfied the criterion under 8 C.F.R. § 204.5(h)(3)(v). According to supporting documents he submitted when he filed the petition in May 2017, he had authored 33 published peer-reviewed articles that, according to a 2017 Google Scholar printout, received approximately 720 citations. The printout indicates that his most cited work at the time was his 2013 article [redacted] which had been cited approximately 150 times, and that his other articles had each garnered a substantially lower number of citations, with some receiving none. On appeal, he submits an updated Google Scholar printout and other evidence, showing that he has authored additional articles and that his work has received additional citations since he filed his petition in May 2017.[3]

While the Petitioner has offered printouts from Clarivate Analytics to support his assertion that his articles have received more citations than those of other scientists in related fields, he has not established that he satisfies this criterion.[4] He presents incomplete copies of other researchers' papers that cite to his work. For example, a 2016 *Chemical Reviews* article cites his article among at least 119 other papers. A 2015 *Energy and Enviornmental Science* article references his paper among at least 190 other articles. A 2016 *Nano Energy* article lists two of his articles among at least 199 other papers. Similarly, a 2016 *Materials Science & Engineering* article cites his article among at least 788 other references. Citations to the Petitioner's work illustrate that his work has had some impact, the

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"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), https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/i-140-evidence-pm-6002-005-1.pdf.

[2] 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.

[3] We determine his eligibility by focusing on facts that existed at the time he filed the petition. *See* 8 C.F.R. § 103.2(b)(1) (providing that eligibility must be established at the time of filing).

[4] The Clarivate Analytics printouts include data on "baselines-citation rates" and "baselines-percentiles" in research fields such as "chemistry," "engineering," "materials science," and "physics." These documents, however, do not provide specific information for the field of "Nanostructure Material Synthesis and Electrochemistry," in which the Petitioner claims extraordinary ability.

record, however, does not sufficiently demonstrate that his research has been widely accepted, implemented, or regarded as authoritative throughout the field, has remarkably impacted or influenced the field, or has otherwise risen to a level of major significance in the field, as required under the criterion. *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, 8.

In response to the Director's request for evidence, the Petitioner submitted printouts from Thomson Reuters Web of Science, and claimed that his articles are the 635th most cited paper between 1978 and 2018 on the topic of [redacted]" and the 257th most cited paper between 2015 and 2018 on the topic of [redacted]" However, he has not shown that the citation ranking confirms his work constitutes major significance in the field. Moreover, he claims extraordinary ability in the field of "Nanostructure Material Synthesis and Electrochemistry," which encompasses multiple topics. His influence on two topics is insufficient to verify that his impact in the field, as a whole, rises to a level of major significance.

The Petitioner also asserts that his work has been published in well-regarded journals and that he has presented at conferences. This evidence confirms that the journals and conference saw value in his research and concluded that it should be shared with others in the field. However, such evidence, without documented impact in the field, is insufficient to confirm that his work has risen to a level of major significance in the field after he disseminated his findings. *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, 8. Furthermore, the prestige of a publication or conference might reflect its standing in the field, but such evidence is insufficient to establish an author or a presenter's work constitutes contributions of major significance in the field. Publications and presentations do not satisfy 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, 1122 (9th Cir. 2010).

Although the record includes a number of reference letters, they are insufficient to confirm that the Petitioner satisfies this criterion. These letters offer details on his professional accomplishments, including his judging, reviewing, writing, and researching activities. While they confirm that his work has impacted the field, they do not establish that the impact rises to the level of major significance. [redacted], an associate professor of physics at the [redacted] University, indicates that the Petitioner's "groundbreaking findings" have been published in "highly accredited, world renowned" publications. [redacted] also indicates that "[his] works provide the foundation for the current research on [redacted] and have "triggered the continuous improvement of capacity of electrodes, which is a pre-requisite for improvement of high-energy [redacted]." [redacted], an IBM research scientist, states that the Petitioner has "made some important discoveries," noting that "[t]hese are significant findings in the field of energy storage since they present new information that differs from previous studies." Other references, including [redacted], a professor of electric engineering at the [redacted] University; [redacted], a professor at the University of [redacted], [redacted], a professor of chemical engineering at the [redacted] Institute of Technology; and [redacted], a senior scientist at the [redacted] Laboratory, praise the Petitioner's research findings, indicating they are important discoveries that have advanced the field.

The record, including the reference letters, demonstrates that the Petitioner's work has value and has received some attention in the field. The evidence, however, has not sufficiently established that the impact or influence of his work has risen to the level of "major significance" in the field. *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); *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); *see also* USCIS Policy Memorandum PM 602-0005.1, *supra*, 8-9 (providing that "[l]etters 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 Petitioner has not sufficiently shown that his research – which has resulted in incremental advancements in the field, as are expected in any original research – qualifies as contributions of major significance in the field.

Some of the documentation discusses the potential of the Petitioner's work. For example, [redacted] categorizes the Petitioner as a "young" scientist who "shows great promise and potential in solving research problems with great scientific significance and applicability." He claims that the Petitioner's work "will guide the research and development of a new generation of [redacted] and their applications" and "will revolutionize the next generation of portable consumer electronics." [redacted] and [redacted] a group leader and principal investor at [redacted] Laboratory, similarly reference the potential of the Petitioner's research. Additionally, the Petitioner has offered a press release posted on [redacted] University's website, discussing the potential impact of his work on [redacted], and an article posted on the [redacted] Laboratory website, noting that his research "is promising to enable further understanding of nanomaterials formed through microwave synthesis." Such evidence, including the reference letters and online materials, speculates his future influence in the field. It is, however, insufficient to confirm that he has already made original contributions of major significance in the field, as required under 8 C.F.R. § 204.5(h)(3)(v).

Upon a review of all the relevant documents in the record, we conclude that the Petitioner has not established, by a preponderance of the evidence, that he has made original contributions of major significance in the field. He has not presented evidence demonstrating that his research has provoked widespread commentary, has been referenced as authoritative, or has received notice from others at a level indicative of its "major significance" in the field. *See Kazarian*, 580 F. 3d at 1036; USCIS Policy Memorandum PM-602-0005.1, *supra*, at 8-9. He has not satisfied this criterion.

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 Q-L-, ID# 3711409 (AAO July 17, 2019)