U.S. Citizenship
and Immigration
Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF C-P-K-

DATE: JULY 23, 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a postdoctoral research associate in therapeutic ultrasound, 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 she must meet at least three.

On appeal, the Petitioner submits a brief, arguing that she satisfies 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,
>
> (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 postdoctoral research associate at the University of [redacted] [redacted] Because she has not indicated or established that she has received a major, internationally recognized award, she must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x).

A. Evidentiary Criteria

In denying the petition, the Director determined 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 two manuscripts for a journal. In addition, she authored eight scholarly articles in professional publications. Accordingly, we agree with the Director that the Petitioner fulfilled the judging and scholarly articles criteria. Further, we find that the Petitioner contributed in developing a real-time imaging system for an ultrasound therapy for aesthetic improvement [redacted] resulting in a contribution of major significance in the field under 8 C.F.R. § 204.5(h)(3)(v). Because the Petitioner has demonstrated that she satisfies three criteria, we will evaluate the totality of the evidence in the context of the final merits determination below.

B. Final Merits Determination

As the Petitioner submitted the requisite initial evidence, we will evaluate whether she has demonstrated, by a preponderance of the evidence, her sustained national or international acclaim and that she is one of the small percentage at the very top of the field of endeavor, and that her achievements have been recognized in the field through extensive documentation. In a final merits determination, we analyze a petitioner's accomplishments and weigh the totality of the evidence to determine if her successes are sufficient to demonstrate that she has extraordinary ability in the field of endeavor. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20.[1] In this matter, we determine that the Petitioner has not shown her eligibility.

According to her curriculum vitae, the Petitioner received her bachelor of technology in instrumentation engineering at the [redacted] Institute of Technology (India) in 2005, doctor of philosophy in biomedical engineering at the University of [redacted] in 2012, and master of business administration at [redacted] in 2015. Moreover, the Petitioner indicated that she held several postdoctoral research associate, research assistant, and internship positions since 2005, including her most recent appointments as a postdoctoral research associate at the State University of [redacted] and [redacted]. As mentioned above, the Petitioner judged others within her field, authored scholarly articles, and made a contribution through her research. The record, however, does not demonstrate that her achievements are reflective of a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990).

Regarding her service as a judge of others, an evaluation of the significance of her experience is appropriate to determine if such evidence is indicative of the extraordinary ability required for this highly restrictive classification. *See Kazarian,* 596 F. 3d at 1121-22. The record reflects that the Petitioner reviewed two papers for *Physics in Medicine and Biology* in 2013 and 2015. Moreover, the Petitioner submitted a letter from [redacted], [redacted] for *Ultrasound in Medicine and Biology*, who indicated that the Petitioner served in the editorial assistantship position where "[s]he screened manuscripts submitted for publication and checked the format and content to make sure each paper could be adequately reviewed." However, the Petitioner did not demonstrate that she actually served as a judge reviewing papers in determining their suitability or acceptability for publication. Furthermore, the Petitioner offered a letter from [redacted], [redacted] Research Park, who stated that the Petitioner participated on [redacted] Patent Review Board where she "made recommendations to reject a patent application, to request more information from the inventor, to keep the invention as a trade secret, or to publish the invention."[2]

Here, the Petitioner has not submitted evidence to establish that her two manuscript reviews, as well as her membership on the Patent Review Board, places her among the small percentage at the very top of her field. *See* 8 C.F.R. § 204.5(h)(2). She did not show, for example, how the number of reviews

[1] *See also* 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/policymanual/HTML/PolicyManual.html (stating that USCIS officers should then evaluate the evidence together when considering the petition in its entirety to determine if the petitioner has established by a preponderance of the evidence the required high level of expertise of the immigrant classification).

[2] [redacted] did not elaborate on the extent of her membership with the Patent Review Board, such as her length of service or the number of reviews she conducted.

she conducted or the number of journals she served compares to others at the top of the field. Furthermore, the record reflects that her paper reviews occurred in 2013 and 2015. Moreover, the Petitioner did not establish that these two instances contribute to a finding that she has a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. at 59. Participation in the peer review process does not automatically demonstrate that an individual has sustained national or international acclaim at the very top of her field. Without evidence that sets her apart from others in her field, such as evidence that she has a consistent history of completing a substantial number of review requests relative to others, served in editorial positions for distinguished journals or publications, or chaired technical committees for reputable conferences, the Petitioner has not established that her peer review experience places here among that small percentage at the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2).

Likewise, publication of a petitioner's research does not automatically place one at the top of the field. Here, the Petitioner presented evidence showing that she authored eight articles in professional journals and seven presentation papers at the time she filed her petition. However, the Petitioner has not demonstrated that this publication record is consistent with having a "career of acclaimed work." H.R. Rep. No. at 59. In addition, the commentary for the proposed regulations implementing section 203(b)(1)(A)(i) of the Act provide that the "intent of Congress that a very high standard be set for aliens of extraordinary ability is reflected in this regulation by requiring the petitioner to present more extensive documentation than that required" for lesser classifications. 56 Fed. Reg. 30703, 30704 (July 5, 1991). She has not shown that her authorship of eight published articles and seven presentation papers is reflective of being among the small percentage at the very top of her field. *See* 8 C.F.R. § 204.5(h)(2).

As authoring scholarly articles is often inherent to the work of scientists and researchers, the citation history or other evidence of the influence of her articles can be an indicator to determine the impact and recognition that her work has had on the field and whether such influence has been sustained. For example, numerous independent citations for an article authored by the Petitioner may provide solid evidence that her work has been recognized and that other researchers have been influenced by her work. Such an analysis at the final merits determination stage is appropriate pursuant to *Kazarian,* 596 F. 3d at 1122. Here, the record indicates that the Petitioner initially provided evidence reflecting that her eight published articles garnered 85 citations and her seven paper presentations received 20. While the Petitioner's citations, both individually and collectively, show that field has noticed her work, she has not established that such rates of citation are sufficient to demonstrate a level of interest in her field commensurate with sustained national or international acclaim. *See* section 203(b)(1)(A) of the Act. Moreover, the Petitioner has not shown that the citations to her research represent attention at a level consistent with being among small percentage at the very top of her field. *See* 8 C.F.R. § 204.5(h)(2).

The Petitioner has submitted published material as evidence of her acclaim. The record contains screenshots reporting on [redacted], as well as the creation of the medical company, [redacted] and its subsequent purchase by [redacted] However, the screenshots do not demonstrate that the Petitioner herself has garnered acclaim from this ultrasound therapy. Rather, the screenshots specifically reference another individual [redacted], as the principal investigator and quote him. The press coverage of [redacted] does not mention the Petitioner. Although she contributed to the research and

development of [redacted] the media reports do not single her out or acknowledge her for her findings. Here, the Petitioner does not establish that this media coverage is reflective of her status as an individual who has garnered "sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation." *See* section 203(b)(1)(A) of the Act.

Moreover, although she claims to have made additional contributions of major significance, the Petitioner did not demonstrate they have had remarkable influence in the overall field. Rather, she provided documentary evidence discussing their potential impact on the field. For instance, the Petitioner offered evidence showing that she contributed to the development of [redacted] an ultrasound device for treating musculoskeletal injuries. However, the media coverage reflects the possible application without demonstrating that the field already recognizes it as a contribution of major significance. Similarly, the Petitioner submitted screenshots announcing the launch of the device which indicate that it "is intended to revolutionize the treatment of musculoskeletal injuries for people with chronic pain," "will revolutionize the treatment of musculoskeletal injuries, especially for people with chronic pain," and "it represents the best possibility of treatment." Here, the evidence speculates on the prospect of being majorly significant. Furthermore, the Petitioner did not submit evidence to establish that she received any sustained national or international acclaim and has been recognized in the field as being among the small percentage at the very top of the field from her work with [redacted] *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2).

The record also contains recommendation letters that summarize the Petitioner's research and original contributions but do not demonstrate that she is among that small percentage at the very top of her field of endeavor or that she has sustained national or international acclaim. Instead, the authors make general assertions repeating the statute and regulations. For instance, [redacted] director of cardiology segment at [redacted], opined that he "would characterize [the Petitioner] as one among that small percentage of researchers at the very top of the field of improving therapeutic ultrasound." [redacted], professor at [redacted] Institute of Technology, claimed that the Petitioner's "contributions to the field have had an unparalleled impact on the advancement of therapeutic ultrasound and its usage in clinical settings, demonstrating her extraordinary ability in the field and her place among that small percentage of researchers at the very top of the field." In addition, [redacted], associate professor at the University of [redacted] indicated that "[t]he direct applicability of [the Petitioner's] findings to clinical care places her among that small percentage of researchers at the very top of the filed worldwide." Although the letters recount the Petitioner's research and highlight her findings, they do not explain or justify their assertions. Repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *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); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). Here, the letters do not provide sufficient information and explanation, nor does the record include sufficient corroborating evidence, to show that the Petitioner is viewed by the overall field as being among that small percentage at the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2).

The record as a whole, including the evidence discussed above, does not establish the Petitioner's eligibility for the benefit sought. The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than those progressing toward the

top. USCIS has long held that even athletes performing at the major league level do not automatically meet the statutory standards for classification as an individual of "extraordinary ability." *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994). While the Petitioner need not establish that there is no one more accomplished to qualify for the classification sought, we find the record insufficient to demonstrate that she has sustained national or international acclaim and is among the small percentage at the top of her field. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2).

III. CONCLUSION

For the reasons discussed above, the Petitioner has not demonstrated her 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. In visa petition proceedings, the petitioner bears the 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 C-P-K-*, ID# 3521169 (AAO July 23, 2019)