U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF C-L-B-

DATE: MAR. 4, 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a chemist, 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
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> (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 scientist at [redacted] Illinois. 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 a journal. 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 two additional criteria, 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.

> *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 Director applied "an improper comparison between [his] citatory history and the citatory histories of others in his field."[1] Moreover, the Petitioner argues that the Director "implemented a novel evidentiary requirement: that [his] aggregate citation count be the primary qualifier by which [he] satisfies this criterion." In general, the comparison of the Petitioner's cumulative citations to others in the field, as well as other overall impact indices, 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 overall field's general view of a contribution of major significance.[2]

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. The Petitioner submits his updated citation history from *Google Scholar* reflecting that his highest cited article received 66 citations, as well as his second highest article garnered 36 citations. Here, the Petitioner does not articulate the significance or relevance of these numbers.[3] Although his citations are indicative that his research has received some attention from the field, the Petitioner did not demonstrate that his citation numbers to his individual articles represent majorly significant contributions to the field.[4] Generally, citations can serve as an indication that the field has taken interest in a petitioner's work. However, the Petitioner has not sufficiently identified the specific

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[1] For instance, the Director compared the Petitioner's total citations (227), h-index (8), and i10-index (8) to the authors of his recommendation letters: (11,185 total citations, 58 h-index, and 235 i10-index), (75,906 total citations, 34 h-index, and 850 i10-index), (1,120 total citations, 15 h-index, and 20 i10-index), (3,184 citations, 34 h-index, and 76 i10-index), and (31,407 citations, 78 h-index, and 313 i10-index).

[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).

[3] The record contains screenshots from *Google Scholar* for his recommenders showing that their individual articles garnered citations in the hundreds and thousands; for example, highest article received 3,119 citations.

[4] *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).

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 provides data from Clarivate Analytics regarding baseline citation rates and percentiles by year of publication for various research fields, including chemistry. Further, the Petitioner presents a document that appears to be self-compiled regarding 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 chemistry. Moreover, the Petitioner asserts that all nine of his papers "rank among the top 1% or top 10% most cited in his field for its respective year of publication."

The comparative ranking to baseline or average citation rates, however, does not automatically establish majorly significant contributions to the field.[5] 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. 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. The Petitioner has not demonstrated, as he asserts, that every article he has authored and published resulted in an original contribution of major significance in the field.

Further, the Petitioner indicates that he submitted "at least 20 representative examples of independent scientific articles that cited [his] research in ways that show the substantial impact that his impact that his work has exerted on the field of chemistry." A review of the sample articles, though, do not show the significance of the Petitioner's research to the overall field beyond the authors who cited to his work. For instance, the Petitioner provided a partial article entitled, " " (*Journal of Pharmaceutical and Biomedical Analysis*), in which the authors cited to his article.[6] However, the article does not distinguish or highlight the Petitioner's written work from the over hundred 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.

In addition, the Petitioner argues that his work has been funded by the , and the record contains his article that acknowledged funding for the research by Receiving funding to conduct research is not a contribution of major significance in-and-of-itself. Rather, the Petitioner must establish that receiving grants or other similar funding are reflective of his past works' major significance, or that his research conducted with the

[5] For instance, according to the date from Clarivate Analytics, chemistry papers published in 2016 receiving only nine citations and in 2018 receiving only three citations are in the top 10%. The Petitioner has not demonstrated that papers with such citation counts have necessarily had a major, significant impact or influence in the field as evidenced by being among the top 10% of most highly cited articles according to year of publication.

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

funding resulted in contributions of major significance. Here, while the Petitioner's research for the journal article was funded by , he did not demonstrate that his findings described in the paper caused a major, significant contribution. In addition, he did not show how the funding reflected the importance of his contributions to the overall field.

Moreover, the Petitioner contends that his results have been patented and commercialized by The Petitioner submitted a letter from holding an unidentified position at who confirmed that the company obtained a patent resulting from the Petitioner's work. A patent recognizes the originality of an invention or idea but does not necessarily establish it as a contribution of major significance in the field. Further, although claimed that the Petitioner's "research has been extremely important to the advancement of this project," he did not further elaborate or explain the impact or influence on the greater field.

In addition, the Petitioner claims that his technology has been implemented by and However, he presented a letter from senior scientist at , who stated that he is "currently exploring the findings of [the Petitioner's] experience in assessing the chemical purity of investigational drugs in early stages of development." The Petitioner also offered a letter from senior scientist at who indicated that he has "implemented his approach in [his] forthcoming paper." The letters speculate on the potential influence and on the possibility of being majorly significant at some point in the future. While the letters show interest in the Petitioner's research, they do not establish how his work already qualifies as contributions of major significance in the field, rather than prospective, potential impacts. Here, the significant nature of his research has yet to be determined or measured. Further, the fact that companies have expressed interest in the Petitioner's research is not necessarily evidence showing that the overall field views his findings of having been greatly influential.

The Petitioner's letters do not contain specific, detailed information explaining the unusual influence or high impact his research 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.[7] 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.[8] 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.

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

[8] *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).

> *Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.* 8 C.F.R. § 204.5(h)(3)(ix).

In order to fulfill this criterion, a petitioner must demonstrate that he commands a high salary or other significantly high remuneration for services in relation to others in his field.[9] He references a previously submitted letter from his employer indicating that he earns $107,000 per year as a "Senior Scientist 1 Chemistry." In addition, the Petitioner provided a screenshot from bls.gov reflecting that mean annual wage for chemists is $80,820, and the median annual wage is $73,740, with $100,630 in the 75th percentile and $129,670 in the 90th percentile.

The Petitioner, however, did not provide comparative wage data of other senior chemistry scientists rather than the general occupation of chemists. *See Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994) (considering a professional golfer's earnings versus other PGA Tour golfers); *see also Grimson v. INS*, 934 F. Supp. 965, 968 (N.D. Ill. 1996) (considering NHL enforcer's salary versus other NHL enforcers); *Muni v. INS*, 891 F. Supp. 440, 444-45 (N. D. Ill. 1995) (comparing salary of NHL defensive player to salary of other NHL defensemen). Regardless, even considering the average wages of chemists, the Petitioner's wages are not at the higher end of the scale, such as chemists in the 90th percentile who earn $129,670 per year. As such, the Petitioner did not demonstrate that he commands a high salary consistent with the regulatory 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, 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. at 954. 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.

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[9] *See* USCIS Policy Memorandum PM-602-0005.1, *supra*, at 11.

ORDER: The appeal is dismissed.

Cite as *Matter of C-L-B-*, ID# 2255246 (AAO Mar. 4, 2019)