U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF W-G-

DATE: MAR. 26, 2019

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a scientific programmer, 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 Texas 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 asserting that he fulfills 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

At the time of filing, the Petitioner was working as a scientific programmer at [redacted] Because the Petitioner 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 and 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 he 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).

As evidence under this criterion, the Petitioner submitted his research publications, citation evidence for his published work, and letters of recommendation from colleagues. The Director considered this

documentation, but found that it was not sufficient to demonstrate that the Petitioner's work constituted original contributions of major significance in the field. For the reasons discussed below, we agree with that determination.

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 contributions that were original 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 the field, or have otherwise risen to a level of major significance in the field.

As one type of evidence of the impact of his work, the record includes a 2018 Google Scholar citation report indicating that his 2013 article entitled was "cited by 74." His next most cited articles, (2014) and (2009), were cited 48 and 21 times respectively. Regarding the Petitioner's remaining articles published from 2007 until 2014, the aforementioned Google Scholar report reflects that they have been cited 12, 7, and 3 times respectively.[1]

On appeal, the Petitioner argues that the Director erred in comparing his citation information with that of another researcher whose name appears in the record. We agree that comparison of the Petitioner's cumulative citation record to that of other scientists or researchers in the record is not appropriate in determining whether he has made original contributions of major significance in the field. Rather, the evaluation of the Petitioner's overall citation evidence relative to others in his field would be more relevant in a final merits determination to demonstrate his sustained national or international acclaim, that he is one of the small percentage at the very top of the field of endeavor, and that his achievements have been recognized in the field through extensive documentation.

The Petitioner maintains that he has published research articles in top-ranked[2] scientific journals and that the InCites Essential Science Indicators (IESI) citation rate for two of his papers is high relative to others in his field. For example, he offered information from IESI indicating that his paper, entitled is in the top 10% most cited by subject area (materials science) for the year in which it was published, having been cited more than 30 times since 2013. In addition, is also in the top 10% most cited in materials science, having been cited more than 26 times since 2014. The comparative ranking of a paper's citation rate, however, does not automatically establish it as a majorly significant contribution to the field. Rather, the appropriate analysis is to determine whether a petitioner has shown that his individual articles, factoring in citations and other corroborating evidence, have been considered important at a level consistent with original contributions of major significance in the field.

[1] Six of his articles listed in this report do not show any citations.

[2] That a publication bears a high ranking is reflective of its overall citation rate. Ranking alone, however, does not demonstrate the influence of any particular author within the publication or show that an author's research has had an impact within the field.

Generally, citations can confirm that the field has taken interest in a researcher's work. The Petitioner submitted various examples of articles that cited to his work; however they do not reflect that his work was singled out as particularly important. Rather, the Petitioner's findings were utilized as background information to the authors' papers. In this case, the Petitioner has not demonstrated that the citations to his work, considered both individually and collectively, are commensurate with contributions "of major significance in the field."

As another form of evidence under this criterion, the Petitioner contends that experts in the field have offered testimony regarding his contributions of major significance in material science.[3] For example, principal materials scientist of (an engineering firm) at the indicated that the Petitioner's "pioneering paper on the local atomic structure of high-energy entropy alloys is the very first breakthrough studying the lattice distortion in HEAs" (high-entropy alloys). further contended that the Petitioner's findings represent "a milestone in the field of HEA research" allowing scientists to "move forward to study the effect of lattice distortion on the mechanical properties of HEAs." Likewise, a researcher at asserted that the Petitioner's work "was the first study which clearly unraveled the lattice distortion of the local structure feature in HEAs from PDF [pair distribution function] analysis." In addition, stated that he used the Petitioner's method in his recent HEA research and then listed a few other research groups that cited to the Petitioner's work in their own studies. We recognize that research must add information to the pool of knowledge in some way in order to be accepted for publication, presentation, funding, or academic credit, but not every finding that broadens knowledge in a particular field is tantamount to a scientific contribution of major significance in that field. Here, the record does not show that the Petitioner's findings have been widely implemented or otherwise represent a scientific contribution of major significance in his field.

Furthermore, a professor at asserted that the Petitioner's research findings relating to HEAs represented a "technical breakthrough" because they proved "that there are lattice distortions in HEAs" and allowed "scientists to better understand the material properties . . . so that they can design new alloys with less trial and error." Similarly, a professor at indicated that the Petitioner's work "drew significant interest and follow up studies in the HEA research community," but the evidence does not show that the impact of the Petitioner's work rises to the level of a contribution of major significance in the field. The record includes two book chapters written by in that briefly reference the Petitioner's work relating to the irradiation resistance of HEAs. The record, however, does not demonstrate that that having his work referenced in this book shows that this findings have affected the field of material science in a substantial way or that his work otherwise constitutes a contribution of major significance in the field.

The record includes additional recommendation letters from the Petitioner's peers. Although these remaining letters praise his work, they do not demonstrate how his contributions are "of major significance in the field." Instead, the letters reference the importance of the Petitioner's works as indicated by their publication in professional journals and their citation by other researchers. As discussed above, the Petitioner has not shown through his citation history or other evidence that his work, once published or presented, has been of major significance in the field. While the selection of

[3] While we discuss a sampling of the recommendation letters, we have reviewed and considered each one.

the Petitioner's articles in professional journals verifies the originality of his work, it does not necessarily reflect that his research is considered of major significance. Without sufficient evidence demonstrating that his work constitutes original scientific contributions of major significance in the field, the Petitioner has not established that he meets 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, 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. 953, 954 (Assoc. Comm'r. 1994). Here, the Petitioner has not shown that the significance and recognition of his work are indicative of the required sustained national or international acclaim or that they are 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. 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, 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 W-G-*, ID# 2592468 (AAO Mar. 26, 2019)