U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF R-, Inc.

DATE: MAR. 27, 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, an optical transport systems supplier, seeks to classify the Beneficiary 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, and subsequently affirmed her decision on a motion to reopen, concluding that the Beneficiary had satisfied only two of the ten initial evidentiary criteria, of which he must meet at least three.

On appeal, the Petitioner submits a brief, arguing that the Beneficiary 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,
>
> (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 employs the Beneficiary as an integrated optics designer in [redacted] California. Because the Petitioner has not indicated or established that the Beneficiary 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 Beneficiary 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 journals 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 the Beneficiary 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 the Beneficiary satisfies the requirements of at least three criteria.

A. Evidentiary 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).

The Petitioner contends that it provided a statement by the Beneficiary on motion that "explain[ed] the facts of his achieved, completed, scientific discoveries and technological innovations clearly and concisely." Moreover, the Petitioner argues that the Beneficiary's "statement corroborates and is corroborated by all of the evidence in the record of his I-140 Petition, including all the expert testimony in the record and [his] own original scientific publications and the many citations to them." In order to satisfy the regulation at 8 C.F.R. § 204.5(h)(3)(v), a petitioner must establish that not only has a beneficiary made original contributions but that they have been of major significance in the field. For example, a petitioner may show that a beneficiary's 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 the Beneficiary has shown original contributions of major significance in the field consistent with this regulatory criterion.

In the Beneficiary's statement, he indicated that he led a team of researchers "in developing [redacted] which enable the transfer of 800 Billion bits of information per second." Moreover, the Beneficiary claimed that his invention "makes possible the continued growth of the digital economy" and "makes it possible for smaller businesses and individuals to make use of it directly." Although the Beneficiary discussed his opinionated benefits of his discovery, he did not provide specific information describing how his invention has already significantly impacted his field in a major way. For example, the Beneficiary asserted that his "research is not only used by many other scientists, but also in the data centers that make Big Data possible." Here, the Beneficiary made broad, general statements without detailing or expanding upon "many other scientists" or "data centers" to show the field's view of his contributions as being majorly significant.

Similarly, the chief executive officer for the Petitioner, [redacted] supplied a letter that highlighted the Beneficiary's work but did not demonstrate how it has been of major significance to the greater field. For example, [redacted] stated that the Beneficiary "was a key member of a group that discovered a breakthrough for faster and more efficient data transfer among optic fibers for our everyday essential devices, including your smartphone." While [redacted] indicated that the Petitioner presented the discovery during the [redacted] in 2018 and "secured a multi-year contract with one of the world's largest transmission equipment suppliers from Japan," he did not establish that a presentation at a conference or securing a contract is necessarily evidence showing that the overall field views the Beneficiary's discovery as having been greatly influential.[1]

[1] *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).

Further, the Petitioner offered recommendation letters that praise the Beneficiary for his original contributions but do not demonstrate their major significance to the field. The letters recount the Beneficiary's work and discoveries and indicate their publications in journals and presentations at conferences. Although they indicate the novelty of the Beneficiary's work, they do not show why it has been considered of such importance and how its impact on the field rises to the level required by this criterion. For example, [redacted] stated that the Beneficiary "contributed to more than 20 presentations and 13 articles in leading technical conferences and journals" and his "contributions to the field of integrated photonics and ultra-fast optical signal processing are highly regarded at the international level."[2] [redacted] however, did not explain how the Beneficiary's contributions "are highly regarded" or how his presentations and articles are viewed by the overall field as being majorly significant. In addition, [redacted] stated that the Beneficiary's work with silicon photonics for high-speed low-power-consumption data communication was reported in *Laser and Photonics Reviews*, which "clearly manifests the major significance and importance underpinning this discovery." While publication in a journal may signify originality, it does not necessarily show in-and-of-itself that a finding or discovery is a contribution of major significance.

Likewise, some of the letters reference the Beneficiary's receipt of a patent. For instance, [redacted] stated that he collaborated with the Beneficiary to develop "one of the first patents within the field regarding temperature stabilization for silicon microresonators." A patent also recognizes the originality of an invention or idea but does not necessarily establish it as a contribution of major significance in the field. Although [redacted] claimed that "many prestigious institutions . . . have used the patent . . . as the basis for follow upresearch [sic]," he did not further elaborate or specifically identify the follow-up research.

In addition, the Petitioner submitted letters that speculated on the potential influence and on the possibility of being majorly significant at some point in the future. For example, the letters claimed that "[t]he breakthroughs *could* [emphasis added] improve the speed of the internet and data transfer and *will* [emphasis added] bring benefits" [redacted] "this patent has the *potential* [emphasis added] to improve individual and business data transfer speeds and computer power for the entire world!" [redacted] "the underlying smart design *will* [emphasis added] allow for a breakthrough in optical processors on a chip, which will not only revolutionize the field but *will* [emphasis added] allow for significantly reduced power consumption" [redacted] and "these inventions *can* [emphasis added] improve the performance of silicon photonic chips and make them transfer data with a faster speed and lower energy" and "*will* [emphasis added] ultimately shape the data centers and computational machines *in the future* [emphasis added]" [redacted] While the letters show promise in the Beneficiary's work, they do not establish how his work already qualifies as a contribution of major significance in the field, rather than prospective, potential impacts. Here, the significant nature of his work has yet to be determined or measured.

As discussed above, the letters do not contain specific, detailed information explaining the unusual influence or high impact the Beneficiary's work has had on the overall field. Letters that specifically articulate how a beneficiary's contributions are of major significance to the field and its impact on

[2] Although we discuss a sampling of letters, we have reviewed and considered each one.

subsequent work add value.[3] 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.[4] 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).

Moreover, the record reflects that the Petitioner provided evidence from *Google Scholar* reflecting that the Beneficiary's published works garnered a total of 328 citations from 20 journal articles with his highest three cited papers (*Laser and Photonics Reviews*, *IEEE Photonics Technology*, and *IEEE Journal of Selected Topics in Quantum Electronics*) receiving 96, 44, and 35 citations, respectively. Generally, citations can serve as an indication that the field has taken an interest in a beneficiary's work. However, the Petitioner did not articulate the significance or relevance of these citations. Further, although the Beneficiary's citations are indicative that his research has received some attention from the field, the Petitioner did not demonstrate that the citation numbers to his individual articles represent majorly significant contributions to the overall field.[5] Similarly, although the Beneficiary participated and presented at conferences, the Petitioner did not adequately identify the specific contributions he has made through his presentations, nor did he show that his conference papers and abstracts are commensurate with contributions of major significance. 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.

For the reasons discussed above, considered both individually and collectively, the Petitioner has not shown that the Beneficiary has made original contributions of major significance in the field.

B. O-1 Nonimmigrant Status

We note that the record reflects that the Beneficiary received O-1 status, a classification reserved for nonimmigrants of extraordinary ability. Although USCIS has approved at least one O-1 nonimmigrant visa petition filed on behalf of the Beneficiary, the prior approval does not preclude USCIS from denying an immigrant visa petition which is adjudicated based on a different standard – statute, regulations, and case law. Many Form I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *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). Furthermore, our authority over the USCIS service centers, the office adjudicating the nonimmigrant visa petition, is comparable to the relationship between a court of appeals and a district court. Even if a service center director has approved a nonimmigrant petition on behalf of an individual, we are not bound to follow

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

[4] *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).

[5] *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).

that finding in the adjudication of another immigration petition. *Louisiana Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, at *2 (E.D. La. 2000).

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 Beneficiary's acclaim and recognition required for the classification sought.

The Petitioner seeks a highly restrictive visa classification for Beneficiary, 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 of the Beneficiary's 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 Beneficiary 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 reasons discussed above, the Petitioner has not demonstrated the Beneficiary's eligibility as an individual of extraordinary ability. 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 R-, Inc.*, ID# 2528922 (AAO Mar. 27, 2019)