U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF J-A-

DATE: MAY 3, 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a medical physicist, 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 additional documentation and a brief, arguing that she meets at least three of the ten criteria.[1]

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.

[1] We decline the Petitioner's request to issue a precedent decision in this case. 8 C.F.R. § 103.3(c).

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 medical physicist with [redacted]s at [redacted] Hospital in [redacted] California. 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). 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 journals. In addition, she 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 she meets an 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 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).

The Petitioner contends that she provided "information concerning the wide-spread (and world-wide) citations of her research, numerous letters of recommendations, and additional evidence of the fact

that she is already among the top researchers in her field." In order to satisfy the regulation at 8 C.F.R. § 204.5(h)(3)(v), a petitioner must establish that not only has she made original contributions but that they have been of major significance in the field.[2] 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. As it relates to her claim that she is "already among the top researchers in her field," that decision is often more appropriate in determining whether the record reflects sustained national or international acclaim and demonstrates that she is among that small percentage at the very top of the field of endeavor in a final merits determination if she met at least three of the regulatory criteria. *See Kazarian* 596 F.3d at 1115. Here, we will address the Petitioner's arguments on appeal and evaluate whether her evidence represents original contributions of major significance in the field consistent with this regulatory criterion.

The Petitioner argues that her research has garnered over 1,100 citations. Again, this criterion requires the Petitioner to establish that she has made original contributions of major significance in the field. Thus, the burden is on the Petitioner to identify her original contributions and explain why they are of major significance. Here, the Petitioner did not demonstrate how her cumulative number of citations pinpoints to which authored articles or findings represents contributions of major significance to the field. Moreover, aggregate citation figures are reflective on a petitioner's overall publication record rather than isolating which research the field considers to be majorly significant. 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.

In the case here, a review of the citation record to her individual articles is a more appropriate analysis.[3] The record contains screenshots from *Google Scholar* reflecting that her three highest cited articles received 210 (*Journal of the American Chemical Society*, 2009), 208 (*Journal of Applied Physics*, 2005), and 171 (*Journal of Nanoparticle Research*, 2006) citations.[4] However, the Petitioner did not articulate the significance or relevance of these numbers. For example, the Petitioner did not demonstrate that these citations are unusually high in her field or how they compare to other articles that the field views as having been majorly significant. Although her citations are indicative that her research has received attention from the field, the Petitioner did not establish that her citation numbers to her individual articles rise to the level of "major significance" consistent with this regulatory criterion. Here, she did not sufficiently identify the specific contributions she has made through her written work, nor has she shown that her citations for any of her published articles are commensurate with contributions of major significance.

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[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 (finding that although funded and published work may be "original," this fact alone is not sufficient to establish that the work is of major significance).

[3] *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).

[4] The Petitioner's remaining articles received 61 citations or less.

In addition, the Petitioner presented six recommendation letters that praise her for her professional achievements but do not demonstrate their major significance in the field. In general, the letters recount the Petitioner's research and findings and indicate their publications in journals and presentations at conferences. Although they show the novelty of her 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 instance, [redacted] listed the Petitioner's publications, presentations, judging experience, and work history without explaining how her professional accomplishments amount to original contributions of major significance.[5] Similarly, [redacted] opined that the Petitioner "is a remarkably talented researcher who has already generated tremendous results in the field of radiation oncology, medical physics and nanotechnology." However, [redacted] did not identify the Petitioner's "tremendous results" and show how the field views them as majorly significant. While [redacted] indicated that he personally used and implemented the Petitioner's research into his own work, he did not describe the remarkable influence or impact to the overall field.[6]

Other letters speculated on the potential influence and on the possibility of being majorly significant at some point in the future. For example, [redacted]. claimed that the Petitioner's "technique holds the potential to reduce the subjectivity in planning gated treatment," "has the potential to save many lives," and "will benefits numerous patients." In addition, [redacted] indicated that the Petitioner's research will address the Environmental Protection Agency's priority that "will be synthesized and characterized" and "will benefit millions of affected people and thousands of contaminated sites." Moreover, [redacted] stated that the Petitioner's "nanoparticles will render cancer cells detectable . . . thus allowing for possible targeting and subsequent treatment" and "[h]er contributions were extremely significant in the field of medical physics, allowing for the potential early detection of cancer cells." While the letters may show promise in the Petitioner's work, they do not establish how her work already qualifies as a contribution of major significance in the field, rather than prospective, potential impacts. Here, the significant nature of her work has yet to be determined or measured.

The Petitioner's letters do not contain specific, detailed information explaining the unusual influence or high impact her 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).

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

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

[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).

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

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. *See Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994). Here, the Petitioner has not shown that the significance of her 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 she 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 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 J-A-*, ID# 2989938 (AAO May 3, 2019)