U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF H-Y-

DATE: MAY 8, 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a professor and researcher in the field of reproductive endocrinology and infertility, seeks classification as an individual of extraordinary ability. *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, and he did not demonstrate that he will continue to work in his area of extraordinary ability.

On appeal, the Petitioner submits 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 professor in obstetrics and gynecology at [redacted] University in [redacted] Turkey. 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 an editor and peer reviewer of manuscripts for journals. 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 four 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.

> *Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.* 8 C.F.R. § 204.5(h)(3)(i).

The Petitioner contends that he meets this criterion based on his receipt of the [redacted] from the [redacted]

[redacted] and "for writing an article that made the top contribution to the Human Reproduction journal's impact factor in 2014." In order to fulfill this criterion, the Petitioner must demonstrate his receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.[1]

As it relates to the "[redacted]," the Petitioner provided a congratulatory letter from [redacted], president of [redacted] University, who informed the Petitioner that he received the award from the [redacted] University Senate based on the "result of [his] quality works in the field of medicine and [his] quality publications." In addition, the Petitioner submitted a list of past winners and the principles reflecting that the "award is to [sic] given to young researchers/scientists in Turkey and under age 40 who, in their field, have qualified and proved to contribute to international science with major significance." Further, the Petitioner offered a letter from [redacted], vice president of [redacted] University, who stated that "[a] committee of 5 professors, all-expert[s] in their field, 3 from our University and the remaining 2 from other universities, make the assessment and the final decision," and a letter from [redacted] dean of the faculty of medicine, who claimed that [redacted] University, Faculty of Medicine [] is one [of] the most prestigious medical faculty in Turkey." Finally, the Petitioner presented a screenshot from radikal.com.tr reporting on the 2004 winners and indicating that the '[redacted] [] are also called as Turkish Nobel Prizes by science community."

Although the evidence relates to his receipt of the [redacted] as well as background and qualification criteria, he did not show that the award is nationally or internationally recognized for excellence in the field.[2] Moreover, while the screenshot from radikal.com.tr claimed that the awards are also called the "Turkey Nobel Prizes," the screenshot does not provide a justification for the assertion. Further, the Petitioner did not demonstrate that a broad, unsupported reference by a single website reflects the national or international recognition for excellence in the field.

Regarding his *Human Reproduction* article, the Petitioner offered background information, impact factors, and rankings for the journal. In addition, the Petitioner presented his co-authored article regarding a [redacted], and a screenshot from medimagazin.com.tr indicating that "[i]t was the study which had the greatest contribution in the occurrence of the citation value of this journal [*Human Reproduction*] in 2014." The Petitioner, however, did not demonstrate that he received a prize or award consistent with this regulatory criterion. Further, he did not establish that the field views an article garnering the most citations in a year from *Human Reproduction* as a nationally or internationally recognized prize or award for excellence.

For the reasons discussed above, the Petitioner did not establish that he fulfills this criterion.

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[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* 6 (Dec. 22, 2010), https://www.uscis.gov/policymanual/HTML/PolicyManual.html.

[2] *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 6 (stating that a relevant factor regarding whether the basis for granting the prizes or awards was excellence in the field include, but not limited to, the national or international significance of the awards or prizes in the field).

> *Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.* 8 C.F.R. § 204.5(h)(3)(iii).

In order to satisfy this criterion, the Petitioner must demonstrate published material about him in professional or major trade publications or other major media, as well as the title, date, and author of the material.[3] The Petitioner provided screenshots from hurriyet.com.tr and arsiv.sabah.com.tr. The screenshots reflect articles about patients with medical issues rather than published material about the Petitioner relating to his work. While the screenshots quote the Petitioner in relation to background and treatment for the respective medical issues, they are not about him. Articles that are not about a petitioner do not fulfill this regulatory criterion. *See, e.g., Negro-Plumpe v. Okin,* 2:07-CV-820-ECR-RJJ at *1, *7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles regarding a show are not about the actor). Moreover, the Petitioner did not include the author of the screenshot for hurriyet.com. Further, although the Petitioner offered evidence relating to the circulation figures for *Hurriyet* and *Sabah* (newspapers), he did not demonstrate that hurriyet.com.tr and arsiv.sabah.com.tr (websites) are major media.

Similarly, the Petitioner claimed to submit the transcripts of television programs from TRT TV, ATV News, STAR TV, and SHOW TV News. However, the Petitioner did not provide the original television programs or other evidence to corroborate his claims. Moreover, while the purported transcript from TRT TV reflects published material about the Petitioner relating to his work in the field, the other transcripts indicate stories about patients with medical issues. Again, although the Petitioner is interviewed to support the stories, they are not about him relating to his work. Further, the Petitioner did not include the authors for any of the material.

Accordingly, the Petitioner did not demonstrate that he meets this criterion.

> *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.[4] 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 "dismissing a record of thousands of citations simply because of [his] references have more citations than he does defies logic." Specifically, the Director found that the

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

[4] *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8 (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).

Petitioner "submitted [his] recommenders citatory histories, but the evidence suggests that in comparison [his] papers are not cited more frequently that [his] recommenders'; in fact, they all have many more papers with higher citations, especially [redacted] who has three papers with more than a thousand citations.[5] In general, the comparison of the Petitioner's cumulative citations to others in the field 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.[6]

As it relates to the cumulative citations of his work, 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. Here, the Petitioner did not demonstrate how his cumulative number of citations, as well as his conference presentations and workshops, 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 his individual articles is a more appropriate analysis.[7] The record contains screenshots from Web of Science reflecting that his three highest cited articles received 169 (Human Reproduction, 2012), 149 (Journal of Clinical Endocrinology and Metabolism, 2003), and 126 (Fertility and Sterility, 2001).[8] 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 his field or how they compare to other articles that the field views as having been majorly significant. Although his citations are indicative that his research has received attention from the field, the Petitioner did not establish that his citation numbers to his individual articles rise to the level of "major significance" consistent with this regulatory criterion. Here, he did not sufficiently identify the specific 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.

[5] The Petitioner provided evidence reflecting that [redacted]'s articles garnered a total of 46,796 citations with his highest three cited three papers receiving 1,298, 1,272, and 1,129 citations, respectively.

[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 (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).

[8] The Petitioner's remaining articles received 90 citations or less.

Moreover, as discussed under the awards criterion, the Petitioner provided evidence that his co-authored article in *Human Reproduction* "had the greatest contribution in the occurrence of the citation value of this journal in 2014." Although the Petitioner showed that his article had the most citations in 2014 compared to the other articles published by *Human Reproduction*, he did not establish the overall field's view of the article beyond the journal who published it. The Petitioner, for example, did not demonstrate that the field recognized the article as a contribution of major significance.

In addition, the Petitioner presented recommendation letters that praise him for his 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 reflect the novelty of his 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] referenced the Petitioner's studies as "very important," "invaluable," and "contributed extensively to research and practice" without demonstrating how the research has greatly influenced the field.[9] Similarly, [redacted] discussed the Petitioner's research and made broad assertions, such as this "is highly relevant to understanding the broader impact of this disease" but did not describe the remarkable influence or impact to the overall field beyond publishing in journals.[10]

Here, 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.[11] 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.[12] 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.

> *Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.* 8 C.F.R. § 204.5(h)(3)(viii).

The Petitioner contends that he qualifies for this criterion based on his leading role for the Obstetrics and Gynecology Department (OGD) at [redacted] University and his leading and critical role for the [redacted] As it relates to a leading role, the evidence must establish that a petitioner is or was a leader. A title, with appropriate matching duties, can help to

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

[10] *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).

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

[12] *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).

establish if a role is or was, in fact, leading.[13] Regarding a critical role, the evidence must demonstrate that a petitioner has contributed in a way that is of significant importance to the outcome of the organization or establishment's activities. It is not the title of a petitioner's role, but rather the performance in the role that determines whether the role is or was critical.[14]

As it relates to OGD, he submitted a letter from [redacted], head of OGD, who stated that the Petitioner "has truly played a leading role in shaping the reputation of [OGD] as the internationally renowned research and teaching center it is known as today." [redacted] also discussed the Petitioner's professional accomplishments, such as his research findings and publications in journals. However, [redacted] did not demonstrate how the Petitioner performed in a leading role for OGD, nor did he show how conducting research and publishing articles demonstrate a leading position.[15] Moreover, the Petitioner, for example, did not compare his role to that of [redacted] the head of OGD, or to any of the others positions within the department. Finally, the Petitioner did not reference any documentation showing that OGD enjoys a distinguished reputation.[16] Further, as discussed under the awards criterion, the Petitioner submitted a letter from [redacted] who highlighted [redacted] University, Faculty of Medicine but did not mention OGD. In addition, the record contains a screenshot from [redacted] relating to the aim of [redacted] University, Faculty of Medicine without any discussion of OGD. Regardless, the Petitioner did not provide any independent, objective evidence of OGD's reputation.

Regarding [redacted] the Petitioner provided two letters from [redacted] president of [redacted] who stated that the Petitioner served as its second president. Accordingly, the Petitioner performed in a leading role for [redacted]. However, the Petitioner did not reference, nor does the record reflect, documentation establishing that [redacted] enjoys a distinguished reputation consistent with this regulatory criterion.

For the reasons stated above, the Petitioner did not establish that he satisfies 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

[13] *See* USCIS Policy Memorandum PM-602-0005.1, *supra*, at 10.
[14] *Id.*
[15] *See* USCIS Policy Memorandum PM-602-0005.1, *supra*, at 10 (stating that letters from individuals with personal knowledge of the significance of a petitioner's leading or critical role can be particularly helpful in making this determination as long as the letters contain detailed and probative information that specifically addresses how the role for the organization or establishment was leading or critical).
[16] *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 10.

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 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 reasons discussed above, the Petitioner has not demonstrated his eligibility as an individual of extraordinary ability.[17] 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 H-Y-*, ID# 3093835 (AAO May 8, 2019)

[17] As the Petitioner has not demonstrated his extraordinary ability under section 203(b)(1)(A)(i) of the Act, we need not consider whether he intends to continue working in the area of extraordinary ability under section 203(b)(1)(A)(ii).