U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF T-Z-

DATE: MAY 22, 2019

APPEAL ON NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a scientific researcher, 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,
>
> (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 is a research scientist at [redacted] Medical Center in [redacted] New York. 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 journals.[1] In addition, he authored two 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 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.

[1] The record contains an email welcoming the Petitioner to the editorial board of *Frontiers in Neuroscience*; however, he did not demonstrate that he actually served on the board.

> 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.[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. 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 the Director "made [her] conclusion that scientists who have risen to the very top of the . . . field have garnered citations numbers in the thousands after comparing [the Petitioner's] citation record with that of scientists with whom he has collaborated, who have cited, and who are in his specific field." 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.[3]

In addition, the Petitioner argues that his two papers, published in Nature and Science, qualify for this criterion. At the initial filing of the petition, he submitted evidence from Google Scholar reflecting that his 2014 Nature article received 89 citations and his 2014 Science article garnered 83 citations. Although the Petitioner provided updated citation figures in response to the Director's request for evidence and on appeal, the documentation indicates additional citations in papers published after the filing of his petition. Similarly, the Petitioner uses these new citation statistics to argue that "his first-authored work published in Nature in 2014 is among the top 1% of all the papers published in the same year in his specific field of research . . . and his average citation rate is significantly higher than that of the faculty members in top 5 institutes and other leading universities." The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1). In the case here, the Petitioner has not demonstrated that his additional citations occurred in articles published at the time of, or prior to, the filing of his petition.

Further, this criterion again 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

[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; 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).

contributions and explain why they are of major significance in the field. Here, the Petitioner does not articulate the significance or relevance of the citations to his two articles. 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 in the field.[4] Generally, citations can serve as an indication that the field has taken interest in a petitioner's research or written work. However, the Petitioner has not sufficiently shown that his citations for any of his published articles are commensurate with contributions of major significance.

While we acknowledge that prestigious status of *Nature* and *Science*, the Petitioner has not demonstrated that publication of his articles in those journals establishes that the field considers his research to be an original contribution of major significance. Moreover, a publication that bears a high ranking or impact factor is reflective of the publication's overall citation rate. It does not show an author's influence or the impact of research on the field or that every article published by *Nature* or *Science* automatically indicates a contribution 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.

In addition, the Petitioner provides data from *Clarivate Analytics* regarding baseline citation rates and percentiles by year of publication for various research fields, including neuroscience and behavior, as well as average citation rates of faculty members at selected universities in the United States. However, the comparative ranking to baseline or average citation rates does not automatically establish majorly significant contributions in 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 the averages of 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. The Petitioner has not demonstrated, as he asserts, that each article he has authored and published resulted in an original contribution of major significance in the field.

Moreover, the record reflects that the Petitioner submitted samples of articles that cited to his papers. A review of those sample articles, however, do not show the major 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, "Circuit-based interrogation of sleep control" (*Nature*), in which the authors cited to his 2014 *Nature* article. 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

[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).

[5] For instance, according to the data from Clarivate Analytics, neuroscience and behavior papers published in 2017 receiving only 13 citations and in 2018 receiving only 3 citations are in the top 1%. 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 1% of most highly cited articles according to year of publication.

not shown that his published articles through citations rise to a level of "major significance" consistent with this regulatory criterion.

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] indicated the originality of the Petitioner's research by stating that "[t]his is the first time anyone has established a consistent, causal link between a genetically defined population and parental care, a behavior essential in all mammals including humans."[6] However, [redacted] did not explain how the Petitioner's finding is viewed by the field as being majorly significant. Instead, [redacted] noted that the Petitioner's research was published in two journals and presented at a scientific conference.[7]

Similarly, the Petitioner argues that the recommendation letters discussed the importance of "several prestigious awards and honors he has received for his excellence in research." For instance, the Petitioner references a letter from [redacted] who stated that that "[the Petitioner] was elected to the [redacted] Society of Fellows through an extremely competitive selection process" and "was appointed as one of ten junior fellows in 2016." [redacted] however, did not demonstrate how being a fellow, as well as receiving academic awards and honors, constitute original contributions of major significance in the field.

Other letters speculated on the potential influence and on the possibility of being majorly significant at some point in the future. For example, "[h]is work will reveal novel, fundamental neural mechanisms of flexible circuit control that are the hallmark of higher cognitive function in human" [redacted], "[t]his genetic handle . . . will provide a precious entry point for targeted drugs and therapy" [redacted], "[t]he discovery of odor informative neurons in premotor cortex raises the possibility that this could be the site where the sample odor is represented and may be essential for the formation of decision" [redacted] "[a] better understanding of the neural mechanism of parenting will allow us to better advise and educate parents" and "will also help us understand the biological basis of pathological behaviors" [redacted] "[the Petitioner's] findings hold a promise to the identification of clinical applications benefitting both mothers and fathers" and "we may be able to finally tackle and answer some of the questions and mysteries to instinctive human behaviors" [redacted], and "[the Petitioner's] study of parental behavior will help us elucidate the neurobiological underpinnings of child abuse and neglect" and "will in turn, lead to more insights into the complexity of human parental behavior" [redacted] (emphasis added). While the letters may show promise in the Petitioner'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.

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

[7] The record contains several invitations to speak at conferences; however, the Petitioner did not demonstrate that any of his presentations resulted in contributions of major significance in the field. 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, 580 F.3d at 1036, aff'd in part, 596 F.3d at 1115.

Likewise, the Petitioner argues that his research received media reports. The record contains screenshots from websites that reported on the Petitioner's initial findings. However, the Petitioner did not show that such coverage is indicative of original contributions of major significance in the field. For example, he did not demonstrate that his research and findings resulted in widespread coverage and interest. Instead, the screenshots speculate on the possibility of having an impact on the field, such as "a finding that [] suggests has implications for fathers' *potential* to be as nurturing as mothers" and "[t]he new research also *might* provide a toehold into understanding the other brain processes involved in parenting" [redacted], "[i]t *could* be that the key to being a better parent is all in your head" [redacted], "it *could* offer clues to the treatment of conditions like post-partum depression" [redacted], and "[t]he research is still too new to apply what has been learned to humans, but logic suggests that some similar processes are likely occurring, which *might* help explain some human parental behavior patterns" [redacted] (emphasis added). Although the screenshots establish the originality of the Petitioner's research, they do not show the actual impact that his findings have had on the greater field.

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.[8] 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.[9] 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.

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 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"

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

[9] *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).

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. 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 T-Z-*, ID# 3518795 (AAO May 22, 2019)