U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF C-R-G-

DATE: NOV. 7, 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a research scientist, 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 petition, concluding that the Petitioner had satisfied only two of the ten initial evidentiary criteria, of which he must meet at least three. The Petitioner then filed a combined motion to reopen and reconsider. The Director granted the motion to reopen, considered new evidence, and denied the petition a second time on the same grounds.

On appeal, the Petitioner contends 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. A petitioner can either demonstrate a one-time achievement (that is, a major, internationally recognized award), or 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 qualifying 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 they are 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

A. Initial Evidence

The Petitioner is currently employed as a research scientist/life science research professional 3 at [redacted] University, [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 determined that the Petitioner met only two of the initial evidentiary criteria, relating to judging the work of others under 8 C.F.R. § 204.5(h)(3)(iv) and publication of scholarly articles under 8 C.F.R. § 204.5(h)(3)(vi). We find that the Petitioner has satisfied a third claimed criterion, relating to contributions of major significance under 8 C.F.R. § 204.5(h)(3)(v).

The satisfaction of three criteria would ordinarily trigger a final merits determination. We find, however, that the record does not support the Director's finding that the Petitioner has participated as a judge of the work of others. As such, the record does not warrant a full review of the totality of the evidence in the context of a final merits determination below. Nevertheless, because there have been positive findings regarding three criteria at different points in this proceeding, we will briefly explain some issues that would have been of concern in a final merits determination.

Evidence of the individual's authorship of scholarly articles in the field, in professional or major trade publications or other major media. 8 C.F.R. § 204.5(h)(3)(vi)

The Petitioner satisfied this criterion with his initial submission, which identified three such articles published in 2010, 2011, and 2017, respectively. Subsequently, the Petitioner showed that additional articles exist.

> *Evidence of the individual'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. 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.

Much of the record revolves around this criterion, because it is the only one of the initially claimed criteria for which the Director found the Petitioner's evidence to be deficient. The Petitioner submitted letters from researchers at various institutions, praising the Petitioner's past research and the published articles it generated. An illustrative example is from a professor at [redacted] University in [redacted] Germany, who stated:

> The research work [the Petitioner] has carried out is highly important. . . . [I]t has focused on the vital but hitherto poorly understood signaling mechanism for regulation of adult [redacted] niche in the brain. [The Petitioner's] work has explored how a delicate balance is maintained in adult brain. . . . [S]uch research provides directions for how such regulation can be modulated to achieve regeneration in regulated fashion in devastating traumatic brain injury, stroke or in neurodegenerative conditions like Alzheimer's disease or Parkinson's disease[].

Other researchers indicated that the Petitioner's work provided important clues in the search for adult [redacted], which could have major therapeutic implications.

Accordingly, we find that the Petitioner has satisfied this criterion.

> *Evidence of the individual's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.* 8 C.F.R. § 204.5(h)(3)(iv)

The Director found that the Petitioner had satisfied this criterion by establishing his membership on the editorial boards of two journals. The record, however, does not show that the Petitioner had actually participated as a judge on either board.

The Petitioner became an associate editor of the [redacted] in January 2018, three months before he filed the petition. He joined the editorial board of the [redacted] in September 2016. However, the record does not include documentary evidence (such as manuscripts, referrals, or acknowledgments of receipt of reviews) to show that the Petitioner had reviewed any manuscripts for either journal, or otherwise judged the work of others in the

same or an allied field in this editorial role. Because the regulation requires "participation . . . as a judge," rather than simply being in a *position* to act as a judge, the Petitioner's editorial board memberships cannot, by themselves, suffice to meet this criterion.[1]

B. Sustained Acclaim

As detailed above, we find that the Petitioner has not met the requisite three evidentiary criteria at 8 C.F.R. § 204.5(h)(3). However, because the Petitioner has been notified, at various times, that he has satisfied the requisite three evidentiary criteria, we will explain why he has not demonstrated, by a preponderance of the evidence, his sustained national or international acclaim and has not shown that he is one of the small percentage at the very top of the field of endeavor.

The Petitioner contends that the Director erred by referring to the Petitioner's field as "cell biology" and, as a result, unfairly comparing the Petitioner to experts outside of his research specialty. Asserting that his "area of expertise" is a "niche field" *within* cell biology, the Petitioner stated: "I am not attempting to prove myself as [being in the] top 1% in cell biology field but rather that I am one among the top or the top and unique in the niche field of '[redacted] and neurodegenerative diseases, like Alzheimer and Parkinson's diseases.'" The Petitioner thus acknowledges that cell biology is a "field," which is the statutory term; the statute and regulations do not permit the exclusion of most members of a field in order to focus on a much narrower "niche field."[2] Also, the Petitioner asserted that his works "have found . . . utility in [the] wide[r] biomedical field, far beyond [the] focused field of [his] expertise." Having asserted that his work has wider applications, he cannot exclude the other researchers using his work from what he defines as his field.

While researchers have praised the Petitioner's findings, the impact of his work largely traces back to one article he published in 2010. The Petitioner has published other articles since then, but he has not shown that they have made a similar impression on the field. Whatever the reception of the Petitioner's 2010 article, it alone is not indicative of a pattern of sustained acclaim.[3] Similarly, the Petitioner received several invitations to visit and speak at various research institutions in the spring of 2011, but this appears to have been a one-time burst of attention that did not continue.[4]

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[1] *See* USCIS Policy Memorandum PM 602-0005.1, *Evaluation of Evidence Submitted with certain 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 (noting that an invitation to judge is insufficient without evidence of actual participation as a judge.)

[2] The Petitioner submitted a table of citation rates, categorized by "Research Fields." The Petitioner's work fell in the "Research Field" of "Biology & Biochemistry." The Petitioner submitted no evidence that any objective source considers the study of '[redacted] and neurodegenerative diseases" to be its own distinct field.

[3] In later submissions, the Petitioner has discussed a 2018 article concerning cells in the liver, but this is outside of his self-described narrow research focus on the brain. His principal contribution to this article appears to have been breeding genetically engineered mice. The article appears to have been published days before the petition's filing date, but it did not feature in the Petitioner's initial submission.

[4] The record lacks background information about the purpose and origin of the invitations. We note that the four submitted invitations are broadly similar in format. One of the messages referred to earlier "communications" that are absent from the record, and therefore we cannot determine whether the institutions (all in the United States) invited the Petitioner on their own initiative, or the Petitioner solicited the invitations for employment purposes. One of the inviting institutions was [redacted] which hired him soon after his visit.

The Director concluded that the Petitioner's overall track record does not measure up to those of leading figures in the field. Some of the evidence the Director cited to support this conclusion derived from outside the record, but there are some internal indications such as statements within the submitted letters, indicating that the authors' published works have earned hundreds or thousands of citations, compared to about 100 citations to the Petitioner's work at the time of filing (mostly to one article). The Petitioner asserted that those individuals have more experience in the field, and the Petitioner has not had as much time to amass a comparable record. However, in reviewing the totality of the evidence, we compare the petitioner's stature in his field to that of all others, regardless of age or experience, to determine whether he is one of that small percentage at the very top of his field.

We have already explained that the Petitioner's editorial board memberships do not establish that he actually judged the work of others. Even if such evidence were available, however, the Petitioner has not established that the two documented memberships are indicative of acclaim or place the Petitioner at the top of his field. In general, peer review is a routine activity among academic researchers, rather than a privilege reserved for the elite. Here, the Petitioner has not submitted evidence showing that either the nature of his membership on the editorial board for these particular journals, or the reputation of the journals themselves, demonstrates acclaim beyond that received by those performing (or invited to perform) typical peer review duties.

The Petitioner did not submit evidence to establish how he became a member of the two editorial boards named above. Furthermore, the Petitioner did not establish the reputations of the two publishers ( ); that information would be relevant when gauging the Petitioner's standing in his field. The materials from contain anomalies of grammar and punctuation. An email message from that publisher, notifying the Petitioner of his acceptance onto the board, contains irregularities such as multiple exclamation points in a row and, in the contact information, an incorrectly formatted mailing address. The certificate of membership in the editorial board shifts from third person to second person, and uses the word "enumeration" when the intended word appears to be "remuneration." These anomalies are of particular concern coming from a publisher whose work revolves around the printed word.

For the above reasons, the Petitioner has not established sustained national or international acclaim in his field, or shown that he is among the small percentage at the very top of that field.

III. CONCLUSION

The appeal will be dismissed for the above stated reasons. 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. The Petitioner has not met that burden.

ORDER: The appeal is dismissed.

Cite as *Matter of C-R-G-*, ID# 5937976 (AAO Nov. 7, 2019)