U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF S-I-K-

DATE: NOV. 21, 2019

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a forestry research scientist currently employed as a professor at [redacted] University, South Korea, 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 Texas 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.

On appeal, the Petitioner submits additional background materials and a brief, arguing that he meets three of the ten criteria, and that the Director did not give sufficient weight to citation of the Petitioner's published articles.

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).

II. ANALYSIS

A. Initial Evidence

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, pertaining to scholarly articles under 8 C.F.R. § 204.5(h)(3)(vi) and judging the work of others under 8 C.F.R. § 204.5(h)(3)(iv). The record supports these findings. Below, we will discuss the Petitioner's claim to have met a third criterion pertaining to original contributions of major significance under 8 C.F.R. § 204.5(h)(3)(v).

> *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 this criterion, petitioners must establish that not only have they made original contributions, but also that those contributions 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. The phrase "major significance" is not superfluous and, thus, it has some meaning. *See Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F. 3d 28, 31 (3rd Cir. 1995) quoted in *APWU v. Potter*, 343 F.3d 619, 626 (2nd Cir. Sep 15, 2003).

The Petitioner claimed to meet this criterion through heavy citation of his articles, and in particular a single heavily-cited article. The Petitioner documented "393 independent citations of [his] published findings," including one article with more than 250 independent citations. He noted that 136 of the independent citations occurred within five years of the filing date, and asserted that this showed the significance of his contribution to the field. The Petitioner further stated: "The pattern of citation shows that the most of his findings has been increasingly cited for the recent years [*sic*]."

The initial filing included nine published articles by the Petitioner, and showed the citation histories for six of them. Almost all the citations were concentrated on three of those articles:

Journal Title	Publication year	Citations
Leisure Sciences	1990	82
The Journal of Environmental Education	2000	261
Annals of Tourism Research	2003	57
Forest Science and Technology	2015	2
Forest Science and Technology	2015	1
Climate Policy	2017	5

The Petitioner submitted a table of "Average Citation Rates for papers published by field, 2003-2013." The Petitioner stated that this table showed that the overall citation average for the Petitioner's field was 7.57. That figure, however, corresponds to the field of "Agricultural Sciences." The Petitioner did not establish that Thomson Corporation, which compiled the citation table, considered the above-named journals to be in the field of agricultural sciences. We note that the citation rate is higher, 11.83, in the field of "Environment/Ecology." The table provides averages, but not percentile ranges, for the citation rates in various fields. This is significant, because an above-average citation rate is not, by itself, an indication that the contribution made by a published paper is of major significance. We further note that only one of the six listed articles appeared during the 2003-2013 date range covered by the table, and that the table itself reflects citation rates as of 2013, not when the petition was filed six years later. For all these reasons, the citation rate table provides insufficient information to serve as a reference for the relative significance of the Petitioner's published work.

Furthermore, while the Petitioner's 2000 article is clearly his most heavily cited, he has not identified any specific contribution made by him and his co-authors in this paper, or explained how any such contribution has impacted the work of other forestry science scholars. Heavy citation of an article can establish that the article has attracted attention in the field, but by itself it cannot establish the nature or significance of the original contributions contained in that article. The burden remains on the Petitioner to provide detail about the contribution made, as well as to show how, and to what extent, his contributions have influenced the field as a whole.

The Petitioner also pointed to his role as a principal investigator for a "successfully completed international critical project funded by [redacted] which has . . . contributed to reduce global emissions and enable more ambitious climate actions." He was a co-author of a two-page handout in the record, entitled "[redacted]" This document proposed "a new mechanism to extend international climate cooperation," through which "host . . . and investor . . . countries [may] cooperate to genuinely reduce global emissions." The Petitioner also submitted an unfinished draft copy of a paper outlining the climate team concept in more detail. However, the record does not show that any nations have actually taken concrete steps to adopt the proposal, or that it has otherwise impacted the field.

One of the Petitioner's collaborators at EDF attested to the Petitioner's central role in the climate team project, but the Petitioner has not established that his involvement with the climate team proposal amounts to a contribution of major significance.

For the above reasons, we agree with the Director that the Petitioner has not established that he made original contributions of major significance.

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. For the foregoing reasons, the Petitioner has not shown that he qualifies for classification as an alien of extraordinary ability.

B. Continued Work/Prospective Benefit

Because the Petitioner has not met the threshold requirement of sustained national or international acclaim, we need not discuss at length his continued work in the field or prospective benefit to the United States as outlined at section 203(b)(1)(A)(ii) and (iii) of the Act. One point, however, bears mentioning. The Petitioner stated that he would prefer an academic position with the University of [redacted] and he identified other potential employers as well. The classification does not require a job offer, but considering that the Petitioner has named specific prospective employers, we note the lack of evidence that the university or any other named entity seeks to hire him.

III. CONCLUSION

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. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994). Here, the Petitioner has not shown that the significance and recognition of his work in forest and environmental science are indicative of the required sustained national or international acclaim or that they are 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).

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 S-I-K-*, ID# 5624237 (AAO Nov. 21, 2019)