U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 4703022

Date: NOV. 26, 2019

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Extraordinary Ability)

The Petitioner, a researcher in toxicology and pharmacology, seeks classification as an alien 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 initial evidentiary criteria, of which she must meet at least three.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 203(b)(1) 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 a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the recognition of his or her achievements in the field through 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 sufficient qualifying 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).

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

The Petitioner indicated employment as a senior fellow at the University of [redacted] Because the Petitioner 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 determined that the Petitioner fulfilled two of the initial evidentiary criteria, judging at 8 C.F.R. § 204.5(h)(3)(iv) and scholarly articles at 8 C.F.R. § 204.5(h)(3)(vi). The record reflects that the Petitioner reviewed papers for journals. In addition, the Petitioner has 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 asserts that she meets an additional evidentiary criterion, discussed below. After reviewing all of the evidence in the record, we conclude that the record 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 argues that the Director did not consider her documentation in response to the Director's request for evidence (RFE). Moreover, she contends that the citation to her work, publication in top ranked journals, and testimonial letters demonstrate her eligibility for this criterion. 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.[1] 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.

At the outset, in response to the Director's RFE, the Petitioner claimed that she provided two additional scholarly articles, two manuscripts under review, and over two dozen sample articles citing to her work that were published after the filing of her initial petition in November 2017. However, the

[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* 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).

Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1). Here, the Petitioner did not demonstrate how evidence relating to events occurring after the filing of her initial petition shows her eligibility at time of filing.

Regarding her citations, the Petitioner initially provided evidence from *Google Scholar* reflecting 179 cumulative citations. In addition, the Petitioner indicated that these citations included at least 31 self-citations or approximately 148 independent citations. Specifically, the record shows that her five highest cited articles received 33 (*Drug Metabolism and Disposition*), 29 (*American Journal of Physiology-Gastrointestinal and Liver Physiology*), 25 (*PLoS One*), 21 (*Toxicology and Applied Pharmacology*), and 16 (*Cell Stress and Chaperones*) citations, respectively.[2]

In response to the Director's RFE, the Petitioner submitted updated information from *Google Scholar* reflecting 245 cumulative citations. Moreover, the articles indicated above contained the following revised citation figures: 43 (*Drug Metabolism and Disposition*), 34 (*American Journal of Physiology-Gastrointestinal and Liver Physiology*), 28 (*PLoS One*), 25 (*Toxicology and Applied Pharmacology*), and 25 (*Cell Stress and Chaperones*). On appeal, the Petitioner presents further citation numbers from *Google Scholar* showing 262 cumulative citations, including 45 (*Drug Metabolism and Disposition*), 34 (*American Journal of Physiology-Gastrointestinal and Liver Physiology*), 28 (*PLoS One*), 26 (*Toxicology and Applied Pharmacology*), and 26 (*Cell Stress and Chaperones*). The Petitioner did not specify how many, both cumulatively and individually, were self-citations or independent citations. In addition, the Petitioner did not establish how many of the citations occurred in papers published after the filing of her original petition.

Notwithstanding the above, 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 in the field. 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 her citations for any of her published articles are commensurate with contributions of major significance. Here, the Petitioner did not articulate the significance or relevance of the citations to her articles. Although her citations are indicative that her research has received some attention from the field, the Petitioner did not demonstrate that her citation numbers to her individual articles represent majorly significant contributions in the field.[3]

Further, the record indicates that the Petitioner submitted excerpts of articles that cited to her work. A review of those articles, though, do not show the significance of the Petitioner's research to the overall field beyond the authors who cited to her work.[4] For instance, the Petitioner provided a partial article

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[2] The Petitioner's remaining 8 articles received between 1 and 13 citations, with 15 articles garnering no citations. Further, the Petitioner did not indicate how many citations for each of her individual articles contained self-citations.

[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] *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

entitled, [redacted]' (*Free Radical Biology and Medicine*), in which the authors cited to her highest cited article (*Drug Metabolism and Disposition*).[5] However, the article does not distinguish or highlight the Petitioner's written work from the over 145 other cited papers. In the case here, the Petitioner has not shown that her published articles through citations rise to a level of "major significance" consistent with this regulatory criterion.

Likewise, the record contains evidence of her attendance and participation at conferences but did not demonstrate how they 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 v. USCIS,* 580 F.3d 1030, 1036 (9th Cir. 2009), *aff'd in part*, 596 F.3d at 1115. Here, the Petitioner has not established that a presentation at a conference alone demonstrates a contribution of major significance in the field.

In addition, the Petitioner claims that she is a "top 3% cited scholar in the field of pharmacology and toxicology." The Petitioner, however, did not provide independent, supporting documentation establishing that she is a "top 3% cited scholar." Likewise, in response to the Director's RFE, the Petitioner asserted that her "citation records place [her] at the top 1% scientist in the field of pharmacology and toxicology" and included a table claiming that "[c]omparing to baseline citation rates and percentiles by research field published by *Incites Essential Science Indicators* by Thomson Reuters . . . [her] citations by year of publication since 2012 to 2017 and total citation all these years have met the citation baseline for top 1% in the field of pharmacology and toxicology." Again, the record does not show that she provided documentation from *Incites Essential Science Indicators* supporting her self-compiled table and establishing that her citations are in the top 1% in her field.[6]

Regardless, the comparative ranking to baseline or average citation rates does not automatically establish majorly significant contributions in the field. Once again, the issue for this criterion is whether the Petitioner has made original contributions of major significance in the field rather than where her citation rates rank among others in her 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 she asserts, that her published articles through citation numbers and percentiles resulted in an original contribution of major significance in the field.

Moreover, the Petitioner argues that "at least seven academic publications that published [her] work rank in the top 5% of journals in their respective fields" and "at least 19 of the journals that have cited to [her] work rank in the top 5% of their respective fields." However, the Petitioner has not demonstrated that publication of her articles in highly ranked journals, as well as presentations at reputable conferences, establish that the field considers her 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 in a highly ranked journal automatically indicates a contribution of major significance. Publications and presentations are not sufficient under 8 C.F.R.

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whole).

[5] Although we discuss a sample article, we have reviewed and considered each one.

[6] The Petitioner appears to include her self-citations in calculating her percentile.

§ 204.5(h)(3)(v) absent evidence that they were of "major significance." *See Kazarian v. USCIS,* 580 F.3d at 1036, *aff'd in part*, 596 F.3d at 1115. Here, the Petitioner has not established that publication in a popular or highly ranked journal alone demonstrates a contribution of major significance in the field.

Finally, the Petitioner presented about a dozen recommendation letters that praised 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, indicate their publications in journals, and point to the citation of her work by others. Although they reflect the novelty of her work, they do not show how her research and findings have been considered of such importance and how their impact on the field rises to the level required by this criterion. For instance, [redacted] claimed that the Petitioner's "findings on the regulation of [redacted] expression by [redacted] microbiota helps the whole scientific community to understand the importance of [redacted] microbiota interaction in human health and disease and inspires other scientists in the field."[7] Moreover, [redacted] opined that the Petitioner's "research findings undoubtedly have sustained high levels of applicable merits to drug design and personalized prescriptions." The recommenders, however, did not further elaborate and discuss how the Petitioner has helped the whole scientific community or identify which drugs have been designed or developed based on her research.

Further, some of the letters speculate on the potential influence and on the possibility of being majorly significant at some point in the future. For example, the Petitioner's "findings pave a new way for unveiling the anti-aging mechanism of [redacted] restriction form a toxicological perspective, and more importantly, provide crucial information on the changes of absorption, distribution, metabolism, and excretion of drugs in people on [redacted]", [redacted], and her "findings bring new ideas to the whole field of gerontology that many detoxification mechanisms bedsides antioxidant pathways are promising candidates for modulating the aging progression" [redacted]. While the letters shows 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. The significant nature of her work has yet to be determined or measured.

Here, the Petitioner's letters do not contain specific, detailed information explaining the unusual influence or high impact her research or work 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 she has made original contributions of major significance in the field.

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

[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).

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. *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). Although the Petitioner has reviewed papers for journals and has authored scholarly articles, the Petitioner has not established that her professional accomplishments have placed her among the upper level of her field.

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.

ORDER: The appeal is dismissed.