U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF T-S-

DATE: OCT. 23, 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a molecular biologist, 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 although the record established that the Petitioner satisfied the initial evidentiary requirements, it did not establish, as required, that the Petitioner has sustained national or international acclaim and is one of that small percentage at the very top of the field.

On appeal, the Petitioner submits additional evidence and asserts that the Director erred by comparing him "to only a few hand-picked individuals" instead of "the entirety of his field."

Upon *de novo* review, we will dismiss the appeal.

I. LEGAL FRAMEWORK

Section 203(b)(1)(A) of the Act makes visas available to immigrants with extraordinary ability in the sciences, arts, education, business, or athletics if: (1) their extraordinary ability has been demonstrated by sustained national or international acclaim and their achievements have been recognized in the field through extensive documentation; (2) they seek to enter the United States to continue work in the area of extraordinary ability, and (3) their 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 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. EVIDENTIARY CRITERIA

The Petitioner is currently employed as an assistant project scientist at the [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 three of the initial evidentiary criteria: judging the work of others under 8 C.F.R. § 204.5(h)(3)(iv); original contributions under 8 C.F.R. § 204.5(h)(3)(v); and scholarly articles under 8 C.F.R. § 204.5(h)(3)(vi). The record supports a finding that the Petitioner meets the plain wording of these criteria. As the Petitioner has demonstrated that he satisfies three criteria, we will evaluate the totality of the evidence in the context of the final merits determination below.

III. FINAL MERITS DETERMINATION

As the Petitioner submitted the requisite initial evidence, we will evaluate whether he has demonstrated, by a preponderance of the evidence, sustained national or international acclaim and that he is one of the small percentage at the very top of the field of endeavor, and that his achievements have been recognized in the field through extensive documentation. In a final merits determination, we analyze a petitioner's accomplishments and weigh the totality of the evidence to determine if his successes are sufficient to demonstrate that he has extraordinary ability in the field of endeavor. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20.[1] In this matter, we determine that the Petitioner has not shown his eligibility.

[1] *See also* 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* 4 (Dec. 22, 2010), https://www.uscis.gov/policymanual/HTML/PolicyManual.html (stating that USCIS officers should then evaluate the evidence together when considering the petition in its entirety to determine if the petitioner has established, by a preponderance of the evidence, the required high level of expertise for the immigrant classification).

The Petitioner earned his Ph.D. degree in 2009, and then undertook a two-year postdoctoral fellowship at [redacted] University. Since that time, he has worked in the laboratory of [redacted] at [redacted] first as a postdoctoral research fellow and then as an assistant project scientist. There is no indication that the Petitioner has held a permanent position or run his own laboratory rather than working as a temporary assistant, or that any research institution has sought to employ him in such a capacity. While not dispositive, the developmental stage of the Petitioner's career is one of several pieces of evidence to consider when weighing the critical issue of the Petitioner's standing in his field.

The Petitioner's research has generally centered around genetic adaptations in [redacted] human populations. The Petitioner indicated that one of his chief research contributions is the "identification of genetic variants that are associated with [redacted] traits in [redacted] populations and of genetic markers that are associated with an increased risk for the development of [redacted]." The chair of the Department of Pediatrics at [redacted], where the Petitioner now works, and his doctoral thesis advisor attested to the Petitioner's role in selected past research projects. For example, the Petitioner measured the activity of certain genes and bred a strain of mutant mice for a drug study.

The Petitioner submitted letters from researchers who have cited his work but not collaborated with him. For example [redacted] of [redacted] University stated:

> [The Petitioner's] work represents an important contribution to the field because it provides previously missing information regarding the control of [redacted] . . . . In turn, this understanding of how the brain controls [redacted] . . has applications towards the treatment of [redacted] disorders.

[redacted] of [redacted] Medical Center called the Petitioner's discovery of a gene relating to [redacted] "revolutionary." [redacted] of University [redacted] offered the more measured assertion that the Petitioner's "work now suggests . . . a therapeutic target" for further research.

[redacted] of the University of [redacted] stated that the Petitioner's research group provided "a vital precedent to our own" research into genetic variants relating to [redacted] In a 2015 article, [redacted] praised one of the Petitioner's articles for showing effects that likely would not have been evident under laboratory conditions. In the same article, however, [redacted] cautioned against "overinterpretation of these results," and that "[m]ore work will be needed" to establish the importance of the gene described in the Petitioner's article.

U.S. Citizenship and Immigration Services (USCIS) may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, USCIS is ultimately responsible for making the final determination regarding an individual's eligibility for the benefit sought. *Id.* The submission of reference letters supporting the

petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the individual's eligibility. *See id.* at 795-96; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). Thus, the content of the references' statements and how they became aware of the Petitioner's reputation are important considerations. Even when written by independent experts, letters solicited by an individual in support of an immigration petition are of less weight than preexisting, independent evidence that one would expect of a scientist who has made original contributions of major significance in the field. *Cf. Visinscaia v. Beers*, — F. Supp. 2d —, 2013 WL 6571822, at *6, *8 (D.D.C. Dec. 16, 2013) (concluding that USCIS' decision to give little weight to uncorroborated assertions from professionals in the field was not arbitrary and capricious).

An apparent purpose of the Petitioner's study of [redacted] populations is to apply the findings to medical situations involving [redacted] The Petitioner has not shown that his work has led to major, significant advancements in the field toward this goal. While the submitted letters indicate that his work points to potential new avenues of inquiry towards the development of such treatments, they do not demonstrate that recognition of this important work equates to sustained national or international acclaim. Under the regulatory structure, original contributions of major significance do not automatically qualify a petitioner for the classification sought; those contributions are only one element of a larger evidentiary framework. In this regard, the Petitioner has not established that as-yet-unrealized potential has resulted in sustained national or international acclaim.

With respect to the dissemination of his findings, the Petitioner established that he published "29 peer-reviewed scientific articles and 2 book chapters." The Petitioner acknowledged that "publication is a relatively common activity for researchers and thus is not necessarily indicative of one's extraordinary ability," but contended that he "has consistently published in top-ranked journals," and that his "work has been cited 1066 times . . . [by] independent and leading researchers." The record establishes heavy citation of the Petitioner's published work, which contributed to the finding regarding the major significance of the Petitioner's contributions.

The Director, in the denial notice, stated that the individuals who provided the letters had, themselves, accumulated thousands more citations to their published work than the Petitioner has done. The Petitioner, on appeal, states that the Director "compared [the Petitioner] to only a few hand-picked individuals who are not representative of the field at large," rather than determine where the Petitioner stands in relation to his entire field. The Petitioner further contends that comparing his citation record to those of his recommenders "implies that any recommender who has a greater number of citations invites a comparison that disqualifies them from eligibility" and encourages petitioners to "seek out recommenders who have fewer citations and perhaps less credibility as experts in their field."

The Petitioner asserts that he has published "a great quantity of articles," and their sheer number "suggests research capabilities of an expert at the very top of his field." Quantity, however, does not imply quality, either of the articles themselves or of the research that led to their publication. Prolific output does not necessarily reflect sustained acclaim.

The Petitioner is correct that comparing his citation record to his recommenders' records does not necessarily accomplish the goal of determining whether he is at the top of his field. However, a

comparison of citation records to others in his field of endeavor who are recognized as being at the top in the field may provide some support to a finding that he is in the small percentage at the top of his field. The evidence does not demonstrate that the recommenders are recognized as being at the top in the field, therefore, we will not compare the citation records and evaluate whether they show that he is at the top of his field.

The statute requires "extensive documentation" of sustained acclaim. The Petitioner has built his case primarily around the citation rate of his own published work, without providing sufficient context to show that this citation rate has translated into national or international acclaim for one particular author of the cited works. Some of the Petitioner's most-cited papers are the work of a consortium, with dozens of credited authors; the collective reputation of a large research group does not necessarily or presumptively translate into acclaim for individual members of that group.

Also, the burden is on the Petitioner to show that the context of the citations points not only to the significance of the reported research, but also to the acclaim of the researchers. In this case, the Petitioner has submitted excerpts from a number of citing articles. In many instances, the authors appeared to cite the Petitioner's research essentially in passing, as background for the findings they sought to report. These articles generally contain dozens of such citations, and the limited context provided by the submitted excerpts does not indicate that the authors held out the Petitioner's work as being more important or acclaimed than that of the many other cited authors.

In addition to his own published work, the Petitioner contends that his peer review and editorial work are reflections of his acclaim. The Petitioner submitted evidence of his peer review work for several academic journals and his membership on the editorial board of the *Journal of Pulmonology Study and Treatment*.

The Petitioner acknowledged that "peer review work may be a relatively common activity among researchers," but contended he stands out because he "conducted peer review work for top-ranked journals in the field," and "only top experts in the field are qualified to conduct peer review work for such prestigious and impactful journals." The Director found that the Petitioner did not show that his peer review work and editorial board membership indicated sustained acclaim or placed him at the top of his field.

On appeal, the Petitioner asserts that the Director failed "to consider all of the evidence," and emphasizes his position on a journal's editorial board. The Petitioner submits a copy of an article about the role of editorial boards, and states that the responsibilities of an editorial board member involve "greater and broader demands on a researcher's expertise," and therefore "selection as an editorial board member implies recognition of a higher level of expertise that exceeds that expected of normal peer-reviewers."

The Petitioner did not submit evidence to support the claim that the journals in question "enlist the services of only the most accomplished researchers" as peer reviewers. A given journal's impact and reputation are not *prima facie* evidence that the journal has restrictive requirements for its peer reviewers.

With respect to his peer review work, the Petitioner submits a graph indicating that he has reviewed a relatively high number of papers. The Petitioner contends that this shows "that he is one of the most

impactful peer reviewers in the field." The Petitioner does not submit evidence of a correlation between acclaim and the number of peer reviews performed.

The Petitioner cannot establish eligibility through his assertions about what general background information "implies." A key deficiency in the record is the lack of evidence about how the *Journal of Pulmonology Study and Treatment* selects members for its editorial board. A printout from the website of the *Journal of Pulmonology Study and Treatment* identified the Petitioner as a member of the editorial board, but it also showed a link labeled "Join Editorial Board." The Petitioner did not submit evidence to show the requirements for membership on that board, or explain what steps he had to take after he clicked on the "Join" link. Without such evidence, there is no support for the Petitioner's claim that his membership on the board "is an additional demonstration of his status as a highly respected expert in the field." In the absence of evidence about this particular board and, for that matter, about the journal itself, we cannot find that the Petitioner's editorial board membership is evidence of sustained acclaim.

The record, as a whole, does not establish the Petitioner's eligibility for the benefit sought. The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than those progressing toward the top. USCIS has long held that even athletes performing at the major league level do not automatically meet the statutory standards for classification as an individual of "extraordinary ability." *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994). While the record shows that the Petitioner's published work has been well received, the totality of the evidence does not indicate he has sustained national or international acclaim and he is among the small percentage at the top of his field. *See* section 203(b)(1)(A)(i) of the Act and 8 C.F.R. § 204.5(h)(2).

IV. 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 T-S-*, ID# 5124098 (AAO Oct. 23, 2019)