U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 7144255

Date: APR. 23, 2020

Appeal of Texas Service Center Decision

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

The Petitioner, a neuroscientist, 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, determining that the Petitioner did not establish, as required, that he meets at least three of the ten initial evidentiary criteria for this classification. The Director further determined that the Petitioner did not establish that his entry will substantially benefit prospectively the United States.

On appeal, the Petitioner asserts that the previously submitted evidence was sufficient to demonstrate that he meets at least three of the initial evidentiary criteria and is otherwise eligible for the benefit sought.

The petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). The Administrative Appeals Office (AAO) reviews the questions in this matter de novo. *See Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). 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) (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." *Chawathe*, 25 I&N Dec. at 376.

II. ANALYSIS

The Petitioner is a neuroscientist and founder of his own consulting company, [redacted] where he has worked since 2017.

A. Evidentiary Criteria

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 ten alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Petitioner claims that he meets five of the ten evidentiary criteria at 8 C.F.R. § 204.(h)(3)(i)-(x), summarized below:

- (iii), Published material about him, relating to his work;
- (iv), Participation as a judge of the work of others;
- (v), Original contributions of major significance;
- (vi), Authorship of scholarly articles; and
- (viii), Performance in leading or critical roles

The Director determined that the Petitioner met two criteria, relating to judging and authorship of scholarly articles. The Petitioner's documented involvement in peer review for scientific journals constitutes participation as a judge of the work of others in the same or allied field under 8 C.F.R.

§ 204.5(h)(3)(iv). In addition, the record reflects that the Petitioner has written several scholarly articles in professional publications in his field under 8 C.F.R. § 204.5(h)(3)(vi).

Upon *de novo* review, we conclude that the Petitioner also established that he meets the published materials criterion at 8 C.F.R. § 204.5(h)(3)(iii). The Petitioner submitted evidence that the findings made in his 2014 *Current Biology* article received coverage in a variety of online publications, including the *Los Angeles Times* and some other major media outlets. The Director determined that the submitted articles are not about the Petitioner, noting that they "focus on the idea of Gambler's Fallacy, which the [Petitioner] did not invent himself." We disagree, as a review of the articles reflects that they focus on the Petitioner's own published study of the [redacted] The Petitioner is quoted extensively in many of the articles and provides commentary on his research methods and the potential implications of his findings. Therefore, we disagree with the Director's determination that the Petitioner did not provide evidence of published materials in major media that are about him and relating to his work in his field.

With respect to the leading or critical roles criterion at 8 C.F.R. § 204.5(h)(3)(viii), the Director acknowledged that the Petitioner submitted evidence demonstrating that he had served in a critical role with his prior employer, [redacted] However, the Director determined that the Petitioner did not establish that [redacted] enjoys a distinguished reputation, noting that it is a "young organization" that had some "recent acclaim." The record indicates that [redacted] develops educational memory and brain-training apps and games for the mobile market and that it distinguished itself in this market segment by winning awards in the tech start-up field, receiving "App of the Year" honors on the major mobile platforms, and receiving media coverage for its products, its high-profile partnerships, and its business activities. Accordingly, we conclude that the Petitioner has met this criterion.

Because the Petitioner has shown that he satisfies at least three of the initial evidentiary criteria, we will analyze the totality of the evidence in the context of the final merits determination below.[1]

B. Final Merits Determination

As the Petitioner submitted the requisite initial evidence, we will evaluate whether he has demonstrated, by a preponderance of the evidence, his sustained national or international acclaim, 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 their successes are sufficient to demonstrate that they have 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.[2] In this matter, we determine that the Petitioner has not met this very high standard.

[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 13 (Dec. 22, 2010), https://www.uscis.gov/policymanual/HTML/PolicyManual.html (providing that objectively meeting the regulatory criteria in part one alone does not establish that an individual meets the requirements for classification as an individual of extraordinary ability under section 203(b)(1)(A) of the Act).

[2] *Id.* at 4 (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 submitted documentary evidence reflecting his educational background and employment history. This evidence reflects that he received a bachelor of science in psychology and master of science in neuroscience from [redacted] University [redacted] in 2010 and 2011, respectively. In 2014, he was awarded a Doctor of Philosophy in Cognitive Neuroscience from University [redacted] where his research focused on self-control, decision-making and neurological disorders. After serving as a post-doctoral neuroscientist at [redacted], he worked for [redacted] as its Head of Science from 2015 until 2017. According to his curriculum vitae, the Petitioner founded [redacted] in 2017 and currently provides services to clients as a neuroscientist and consultant. In addition, the Petitioner has authored two books and regularly publishes articles and essays as a science writer for the online outlet *Medium*.

As mentioned above, the Petitioner has judged the work of others within his field, authored scholarly articles (including one that received mainstream media coverage), and previously held a critical role with the educational game and app development company [redacted]. We have also considered other relevant evidence such as evidence of the recognition he has received based on his original contributions to his field, both in the academic domain and in the field of applied neuroscience. The record, however, does not demonstrate that the Petitioner's achievements are reflective of a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990).

Relating to the Petitioner's service as a judge of the work of others, an evaluation of the significance of his experience is appropriate to determine if such evidence indicates the required extraordinary ability for this highly restrictive classification. *See Kazarian,* 596 F. 3d at 1121-22.[3] The Petitioner states he completed four manuscript reviews in 2014 and 2015, and provided evidence that he completed one peer review for *Frontiers in Psychology* and one for *Neuropsychologia*.[4] Participation in the peer review process does not automatically demonstrate that an individual has sustained national or international acclaim at the very top of his field. The Petitioner provided rankings for the four journals that invited him to review manuscripts, noting, for example, that *Neuropsychologia*, is ranked in the top 10 among behavioral neuroscience journals. The invitations the Petitioner provided from these journals indicate that he was selected as a reviewer based on his subject matter expertise; however, expertise is a considerably lower threshold than acclaim. Without evidence that sets him apart from others in his field, such as evidence that he has a consistent history of completing a substantial number of review requests relative to others, or served in editorial positions for distinguished journals or publications, the Petitioner has not established that his peer review experience places him among that small percentage at the very top of his field of endeavor. *See* 8 C.F.R. § 204.5(h)(2).

Likewise, the Petitioner's publication of scientific research does not automatically place him at the top of the field. The Petitioner emphasized that he has published his research in "some of the most

[3] *See* USCIS Policy Memorandum PM 602-0005.1, *supra* at 13 (stating that an individual's participation should be evaluated to determine whether it was indicative of being one of that small percentage who have risen to the very top of the field of endeavor and enjoying sustained national or international acclaim).

[4] The Petitioner provided evidence that he received invitations to peer review manuscripts from the editors of *Frontiers in Integrative Neuroscience* and *Experimental Brain Research* but did not document his completion of reviews for these journals.

prestigious academic journals in his field," calling particular attention to the top 15 and top 20 rankings of *Neuropsychology* and *Current Biology*.[5] The Petitioner, however, has not demonstrated that his publication record is consistent with having a "career of acclaimed work." H.R. Rep. No. 101-723 at 59. As authoring scholarly articles is often inherent to the work of scientists and researchers, the citation history or other evidence of the influence of the Petitioner's articles can be an indicator to determine the impact and recognition that his work has had on the field and whether such influence has been sustained. For example, numerous independent citations for an article authored by the Petitioner may provide solid evidence that his work has been recognized and that other researchers have been influenced by it. Such an analysis at the final merits determination stage is appropriate pursuant to *Kazarian,* 596 F. 3d at 1122.

At the time of filing, the Petitioner offered evidence that his most-cited articles had been cited by others 19 and 16 times, respectively. He authored one additional article that had been cited by others, with seven citations. The Petitioner did not submit comparative data demonstrating that any of these articles are considered highly cited, or that his overall citation record is high relative to the top researchers in the neuroscience field. While the citations, both individually and collectively, show that field has noticed his work, the Petitioner did not claim or attempt to establish that such rates of citation demonstrate a level of interest commensurate with sustained national or international acclaim in his field. *See* section 203(b)(1)(A) of the Act. Moreover, the Petitioner did not show that the citations to his research represent attention at a level consistent with being among small percentage at the very top of his field. *See* 8 C.F.R. § 204.5(h)(2).

The Petitioner also provided evidence that he authored a technical guide, [redacted], which is intended for students and researchers, and a book, [redacted], which appears to be intended for a wider audience. The Petitioner has not provided evidence regarding the number of books published or sold, evidence that speaks to the field's reaction to these books, or other information to establish that the Petitioner's activities as a book author have received or resulted in sustained national or international acclaim.

Finally, with respect this his published work, the Petitioner emphasizes that he is a prolific contributor of "essays and articles about the brain and mind" to the online platform *Medium* (www.medium.com) and "has attracted a large readership," with some articles recognized as among the most read on the website.[6] *Medium* is described in the record as an "online publishing platform" that is "regularly regarded as a blog host," and which offers articles by a "hybrid collection of amateur and professional people." The Petitioner provided evidence that he earned [redacted] recognition in several fields including mental health, science, psychology, health and self-improvement, and explained that this recognition is determined by an algorithm. He also states that he is "among the few authors published by *Medium* who is receiving payment for publishing on the platform."

The Petitioner submitted his *Medium* profile, which indicates that he joined the platform in [redacted] 2018 and had approximately 1,960 followers at the time he filed the petition. While it appears that his

[5] The Petitioner's submitted Google Scholar citation history includes seven publications authored by him in 2014 and 2015, including four peer-reviewed articles, his doctoral thesis, and two "replies" published in a 2015 issue of *Current Biology* in relation to his 2014 *Current Biology* article.

[6] The Petitioner indicated that his most-read article had 29,000 views.

articles have been well-received by *Medium* readers, the evidence does not establish how his success on this platform is indicative of or has led to his sustained national or international acclaim as a neuroscientist. The fact that he is one of the few writers who is paid for his contributions to *Medium* is not an indicator that he has been recognized as one of the small percentage at the very top of his scientific field. The Petitioner has not provided evidence to demonstrate that his record of publication, or the reaction to it by other experts in his field, places him at that level or is indicative of his sustained acclaim.

The Petitioner places particular emphasis on evidence that his 2014 peer-reviewed *Current Biology* article, [redacted] received an "overwhelming response" not from other researchers, but from newspapers and other news organizations in the United Kingdom, United States, and a dozen other countries. As noted, some of the attention the Petitioner's article received was from major media outlets, including the *Los Angeles Times*, *BBC News*, *The Times*, and *The Telegraph*. The Petitioner asserts that "[i]t is extremely rare that the work of a scientist gets this much attention from the general public." In his study, he analyzed [redacted] by reviewing footage from World Cup and Euro Cup football matches that had been played over a 36-year period. The evidence reflects that his study's findings were deemed to be of interest to readers with an interest in soccer/football and with an interest in behavioral science, as the articles were published in both sports and science sections of these publications.

While the scope of media attention received by the Petitioner's journal publication may be unusual, if not "extremely rare," he has not established that the media outlets recognized him as a researcher with a career of sustained national or international acclaim. The published materials are about him in that he is acknowledged as the [redacted] doctoral student who co-authored the *Current Biology* article and was interviewed and quoted about his research and findings. They do not, however, focus on him or his overall body of work or reputation in the field. Nor does the evidence establish how this media attention, while likely beneficial to him as he pursued opportunities in his post-academic career, has resulted in sustained acclaim or in his recognition by his field as one of the small percentage at the very top of that field. The Petitioner has not shown, for example, that he or his work have received major media attention since 2014. The record reflects that the Petitioner, in his capacity as lead neuroscientist at [redacted], was one of several neuroscientists interviewed for a 2016 article titled '[redacted] published by Wareable.com, a website described as "the go-to resource for wearable technology reviews, news and analysis for consumers, shoppers and those within the industry." However, this article is not about the Petitioner and the record reflects no other published materials him and his work.

We have also considered the Petitioner's claim that the media attention afforded to his 2014 *Current Biology* article reflects that he received recognition for an original contribution of major significance. The evidence reflects that the Petitioner's psychological study of [redacted] was likely novel and generated interest in the mainstream media. However, this evidence does not support a finding that the Petitioner made a contribution that has remarkably impacted or influenced the field or have otherwise risen to a level of major significance in the field of neuroscience. Rather, the Petitioner states that his findings "have the potential to significantly change the behavior of professional soccer players at the highest levels of the sport and thereby significantly impact the outcome of major soccer tournaments worldwide." He submits evidence that soccer is a multibillion

industry and states that given the economic importance of the sport, his research should be regarded as a contribution of major significance. While it may be true that the scientific evidence gained from the Petitioner's research "may be used to train [redacted]' he neither claimed nor provided evidence that coaches, trainers or sports psychologists working in the sport have relied on his research to inform their coaching and training methods. Moreover, as discussed above, he has not established that his research findings from this study, cited 16 times by other researchers, have made a major impact on the field of neuroscience or that this level of interest in his research is demonstrative of his placement among the small percentage of neuroscientists at the very top of the field.

With regard to the Petitioner's role at [redacted] and his contributions made while with the company, he has not established that his 22-month tenure as head of science with this organization resulted from or led to sustained national or international acclaim, or that this role is indicative of a "career of acclaimed work in the field." *See* section 203(b)(1)(A) of the Act and H.R. Rep. No. at 59. The Petitioner submitted a letter from [redacted], who provided sufficient information regarding the Petitioner's role and accomplishments to establish that he significantly contributed to the company's early success and noted that his efforts "were instrumental to ensure a robust scientific culture at [redacted]' [redacted] states that the Petitioner represented the company at several conferences as "an ambassador for the brand" and the record reflects that he contributed to the above-referenced Wareable.com article in his capacity as lead neuroscientist with [redacted]. However, neither the reference letter nor the supporting evidence demonstrates that he drew significant attention or gained significant recognition from the greater field as a result of his work with [redacted].

The Petitioner highlights [redacted]s collaboration with [redacted] University scientists to create [redacted] a memory and brain-training application that "has the potential to improve the memory of patients with [redacted]' [redacted] of [redacted] states that the Petitioner's neuroscience training and "business expertise" make him "a person of extraordinary ability" with "unique skills." She states that, while at [redacted], "[h]is efforts helped us to launch a digital game worldwide for training memory - the first collaboration of its kind between University of [redacted] and a mainstream tech company." [redacted] praises the Petitioner's ability to translate "academic findings into popular consumer products," describes the [redacted] app as "valuable," and states that the Petitioner's efforts "stimulated significant progress in a fast-moving industry." The record supports a finding that [redacted] and [redacted] scientists enjoyed a productive collaborative relationship that was perhaps novel in nature, and that the Petitioner was involved in that relationship. However, the Petitioner has not established that the mobile app that resulted has made a major impact in the field of neuroscience or that it has been successfully used to treat patients with [redacted] health disorders. Further, the Petitioner has not established that his role in this project for [redacted] resulted in any notable recognition or attention to him by others in the field outside of the parties working on the project. For example, the Petitioner is not mentioned in the press release regarding [redacted]'s partnership with [redacted] or in any publicity materials regarding [redacted]s products.

[redacted] letter also highlighted the Petitioner's work with professional rugby players, noting that [redacted] had a collaboration with England's [redacted]. He explains that the Petitioner regularly visited with the players to test cognitive ability and worked on developing methods for tracking the effect of head injuries. [redacted] further explains that "[t]ogether with the team physiotherapist, he collected important data that gave us an insight into the cognitive decline experienced after a

concussion, and the stages of recovery following the head trauma." Finally, he states that he "cannot overstate the relevance of this research with respect to the athlete's welfare and sports in general."

The Petitioner provided an article from *Motherboard* (motherboard.vice.com) which discusses the joint study between the rugby team, [redacted] and [redacted] University. The record does not contain any information regarding the outcome of the study or its impact on the team or "sports in general" in support of the Petitioner's claim that his efforts resulted in a contribution of major significance in the field. The evidence reflects that the Petitioner's work with [redacted] potentially has several important implications, but the Petitioner has not shown how it has had a significant impact on his field. Moreover, the submitted article and press release do not mention the Petitioner and there is no evidence that his participation in the rugby study garnered him recognition in his field. The Petitioner has not demonstrated that his contributions have garnered him a level of sustained national or international acclaim that has elevated him to the very top of his field.

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. U.S. Citizenship and Immigration Services 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 his ongoing 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 that 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). While one of the Petitioner's published works garnered significant media attention, the record does not indicate that he has achieved a degree of recognition consistent with the sustained acclaim that the statute demands. We find the record insufficient to demonstrate that he has sustained national or international acclaim and is among the small percentage at the top of his field. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2).

Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding whether his "entry into the United States will substantially benefit prospectively the United States" under section 203(b)(1)(A)(iii). *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

C. O-1 Nonimmigrant Status

We note that the record reflects that the Petitioner has been granted O-1 status, a classification reserved for nonimmigrants of extraordinary ability. Although USCIS has approved at least one O-1 nonimmigrant visa petition filed on behalf of the Petitioner, the prior approval does not preclude USCIS from denying an immigrant visa petition which is adjudicated based on a different standard - statute, regulations, and case law. Many Form 1-140 immigrant petitions are correctly denied after USCIS approves prior nonimmigrant petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp.

2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), affd, 905 F. 2d 41 (2d. Cir. 1990). Furthermore, our authority over the USCIS service centers, the office adjudicating the nonimmigrant visa petition, is comparable to the relationship between a court of appeals and a district court. Even if a service center director has approved a nonimmigrant petition on behalf of an individual, we are not bound to follow that finding in the adjudication of another immigration petition. *Louisiana Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, at *2 (E.D. La. 2000).

III. CONCLUSION

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.

ORDER: The appeal is dismissed.