U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 6547352

Date: APR. 23, 2020

Appeal of Texas Service Center Decision

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

The Petitioner, a chemist, 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 Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner had satisfied at least three of ten initial evidentiary criteria, as required. The matter is now before us on appeal.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. 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)(A) of the Act makes immigrant visas available to aliens 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,
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> (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
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> (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 their 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 they 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

After earning a Ph.D. in Chemistry from [redacted] in 2013, the Petitioner began working for [redacted] in [redacted] Pennsylvania, where he intends to continue working as a lead chemist.

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). The Petitioner claims to have met four criteria, summarized below:

- (iv), Participation as a judge of the work of others;
- (v), Original contributions of major significance;
- (vi), Authorship of scholarly articles; and
- (viii), Leading or critical role for distinguished organizations or establishments.

The Director found that the Petitioner met the criteria pertaining to judging and scholarly articles. On appeal, the Petitioner maintains that he also meets the other two claimed criteria.

We have reviewed all of the evidence in the record, and conclude that it does not show that the Petitioner satisfies the requirements of at least three criteria. The Petitioner meets only the two criteria granted by the Director. We will discuss the other two claimed criteria below.

> *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)

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 initially submitted letters describing his work at [redacted] and [redacted] in varying degrees of technical detail. We will discuss examples of these letters here. A former colleague at [redacted] stated the following:

> [The Petitioner] wants to exploit the technology of [redacted] dyes by developing varying architectural designs to create bright [redacted] labels for molecular detection and cellular imaging. The versions of the tags that he has constructed are structurally sound but functionally and spectroscopically flexible. These salient features are crucial . . . for developing potential [redacted] therapeutic pathways and high throughput compound screening that has a more direct impact on public health care.

The professor who supervised the Petitioner's doctoral studies at [redacted] stated that the Petitioner "has made significant contributions to the field of molecular diagnostics using [redacted] technology." The professor describes the Petitioner's "groundbreaking work" in technical detail, but does not explain how that work has influenced the field. The assertion that later graduate students have built on the Petitioner's work does not show impact beyond that one laboratory at [redacted]

The president and chief executive officer (CEO) of [redacted] stated that the Petitioner "took the lead" on various company drug screening projects. For example:

> [redacted] is a receptor for [redacted], a growth factor whose mutation causes fronto-temporal dementia (FTD) and other neurodegenerative disorders. . . . [The Petitioner] created a very sensitive method for measuring the [redacted] interaction as a means to screen for compounds that will be therapeutic agents for FTD. . . . He was able to screen some preliminary hits and is currently doing further work to validate those hits.

The Petitioner's other projects involve screening for mutant genes relating to Parkinson's disease, cystic fibrosis, and other degenerative diseases. The letter indicates that the Petitioner's work has attracted funding in the form of grants and venture capital, but does not explain how the Petitioner's contributions have had an impact on the field. The nature of the Petitioner's work contributes to drug discovery, but the record does not objectively establish that the Petitioner's efforts have had major significance.

The director of the [redacted] at the University of [redacted], a colleague of [redacted]'s founder, stated that the Petitioner "managed to revolutionize this drug discovery platform," but the record does not show that the Petitioner's methods have been widely adopted or have accelerated drug discovery. The submitted letters offer very detailed and technical descriptions of the nature of the Petitioner's work, but refer only in general terms to the promise and potential of how that work might be of future benefit.

The Director advised the Petitioner in a request for evidence: "While the letters of recommendation provide detailed information about the research that the beneficiary has conducted . . . , they have not established that the research achievements have made a major scientific impact."

In response, the president and CEO of [redacted] stated that the Petitioner's "contributions to the company have impact across all of our programs. His work has led directly to the discovery of potential

new drugs to treat Parkinson's disease, Gaucher's disease, and certain forms of Alzheimer's." He also stated that the Petitioner's "contributions . . . are closely-held trade secrets that will eventually lead to patents once the Company advances its drug compounds into clinical trials."

The Petitioner does not explain how "closely-held trade secrets" already have major significance, while they are concealed from everyone else in the field, and before clinical trials have demonstrated the effectiveness of the drug candidates. The seriousness or prevalence of a given disease does not convey major significance on every secret, untested drug candidate intended to treat that disease. The Petitioner submitted background materials about the drug development process, indicating that "thousands and sometimes millions of compounds . . . may be screened and assessed . . . only a few of which will ultimately receive approval." The materials also indicated that the majority of candidates never reach the clinical trial stage, and that "[l]ess than 12% of the candidate medicines that enter clinical testing make it to approval." The record does not show that [redacted] has produced any approved drugs, or that any of its drug candidates have reached the clinical trial stage. Therefore, it is not evident that the Petitioner has made contributions of major significance in this regard.

The Director concluded that "while the letters provide information about the beneficiary's research and original contributions to the field, they have not established that his research achievements have made a major significant impact or are of major significance in the field." The Director stated that the *potential* for major significance does not satisfy the regulatory requirements, and found that the Petitioner did not submit objective documentary evidence to corroborate the claims in the submitted letters.

On appeal, the Petitioner contends that his doctoral research, documented in journal articles and conference presentations, "constitute[s] contributions of major significance." The Director acknowledged that the Petitioner's scholarly articles satisfy a separate regulatory criterion under 8 C.F.R. § 204.5(h)(3)(vi). Although the record includes two articles (published in 2011) that have accumulated 30 citations, the Petitioner has not sufficiently demonstrated that his work has been cited as authoritative in the field or has otherwise influenced the field in a significant way. *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 (Dec. 22, 2010), http://www.uscis.gov/legal-resources/policy-memoranda. Generally, citations can serve as an indication that the field has taken interest in a petitioner's work; however, the fact that the Beneficiary has published articles that other researchers have referenced, is not, by itself, sufficient to establish the he meets this criterion. Here, the Petitioner has not submitted sufficient evidence to show that his doctoral research has provoked widespread commentary or received notice from others in the field at a level consistent with "contributions of major significance in the field." The Petitioner also contends that the Director did not give sufficient weight to letters from the CEO of [redacted] but statements from the Petitioner's employer do not necessarily reflect a consensus in the field.

The Petitioner also asserts that [redacted]'s receipt of two research grants from the [redacted] is "evidence that the contributions made by [the Petitioner] have been substantial. If not, they would not continue to give grants to [redacted]' The record does not include evidence from the Foundation to show what factors the Foundation considered when reviewing [redacted]'s second grant application. Without such evidence, we cannot give any weight to the claim that the Foundation's grants are presumptive evidence of the significance of the Petitioner's contributions. (We note that a submitted

printout from the Foundation's website identifies the lab's president, not the Petitioner, and therefore it does not show special attention to the Petitioner in particular.)

The Petitioner has not established that his original contributions have been of major significance in the field.

> *Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.* 8 C.F.R. § 204.5(h)(3)(viii)

The Petitioner initially claimed a "leading or critical role for both [redacted] and for [redacted]." On appeal, the Petitioner does not dispute the Director's conclusion that the Petitioner did not show that he played a leading or critical role for [redacted] We therefore consider the issue to be abandoned.[1]

The Petitioner asserts that his "critical role helps [redacted] receive funding from venture capitalists and disease foundations." We do not need to discuss the nature of the Petitioner's role at the company unless the Petitioner has established that [redacted] has a distinguished reputation.

As evidence of that reputation, the Petitioner has submitted copies of several online articles indicating that [redacted] secured venture capital funding and entered into collaborations with companies that provided materials such as "patient-derived cells" and a "proprietary compound library" for [redacted] use. The company also participates in a startup incubator run by the University of [redacted]

The Petitioner did not explain how these materials establish that [redacted] has a distinguished reputation. Media coverage announced the beginnings of various ventures, such as collaborations, and the receipt of grants and venture capital. The Petitioner has not shown that [redacted] has attracted similar coverage for the results obtained as a result of the announced collaborations and funding. Local media announced the company's intention to begin drug development, but, as already noted above, the record does not show that [redacted] has developed any approved drugs. The company's documented track record consists of fundraising and "closely-held trade secrets" that have not yet proven to be effective.

The Director determined that the Petitioner did not "submit evidence to establish that [redacted] has a distinguished reputation as compared to other related organizations." On appeal, the Petitioner contends that the regulation "does NOT require a comparison to other related organizations," only that the organization in question be "marked by eminence, distinction, or excellence." The Petitioner cites "Webster's online dictionary" for this definition, as does a U.S. Citizenship and Immigration Services (USCIS) policy memorandum.[2] According to that same online source, however, the terms "eminence, distinction, [and] excellence" all imply such a comparison. *Eminence* is "a position of prominence or

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[1] *See Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005), citing *United States v. Cunningham*, 161 F.3d 1343, 1344 (11th Cir. 1998); *see also Hristov v. Roark*, No. 09–CV–27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (plaintiff's claims were abandoned as he failed to raise them on appeal to the AAO).

[2] USCIS Policy Memorandum PM 602-0005.1, *supra*.

superiority";[3] *distinction* is "the quality or state of being excellent or superior";[4] and *excellence* is the noun form of to *excel*, which means "to be superior to" or to "surpass in accomplishment or achievement."[5] All these definitions include the inherently comparative term "superior," defined as "of higher rank, quality, or importance" and "one that surpasses another in quality or merit."[6]

Notwithstanding the Petitioner's claim that "distinguished" is not a comparative term, the Petitioner claims that "newspaper articles from the [redacted] Business Times and [redacted] Post Gazette describe [redacted] as a leader in the field, thereby essentially comparing [redacted] to others in the field." The submitted articles from those papers, however, do not use the words "leading" or "leader" to describe [redacted] and the Petitioner does not provide quotes from any of the articles that could be construed to have that meaning. One article indicates that [redacted] is one of the first companies of its kind *in the* [redacted] *area*, but the company's geographical location does not make the company "a leader in the field."

The record does not show that [redacted] has a distinguished reputation.

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 his 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).

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.

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[3] *See* https://www.merriam-webster.com/dictionary/eminence (last visited Apr. 3, 2020).
[4] *See* https://www.merriam-webster.com/dictionary/distinction (last visited Apr. 3, 2020).
[5] *See* https://www.merriam-webster.com/dictionary/excel (last visited Apr. 3, 2020).
[6] *See* https://www.merriam-webster.com/dictionary/superior (last visited Apr. 3, 2020).