U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 7401290

Date: APR. 23, 2020

Appeal of Nebraska Service Center Decision

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

The Petitioner, a physician, 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 although the record established that the Petitioner satisfied the initial evidentiary requirements, she did not establish, as required, that the Petitioner has sustained national or international acclaim and is an individual in the small percentage at the very top of the field. 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,
>
> (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) (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. ANALYSIS

After earning her Doctor of Medicine degree, the Petitioner served in a clinical rotation at Children's Hospital of [redacted] and a residency at [redacted] Children's Hospital, before undertaking a postdoctoral clinical and research fellowship at Children's Medical Center [redacted]. After nearly a year as chief of the Division of Pediatric [redacted] and assistant professor of Pediatrics at the University of [redacted] the Petitioner served as a consultant and guest faculty at Children's Hospital in [redacted] India. The Petitioner now practices medicine at [redacted] Health's clinic in [redacted], Iowa, and is a clinical assistant professor at the University of [redacted]

A. Evidentiary Criteria

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). Prior to the denial, the Petitioner claimed to have satisfied eight of the ten criteria, summarized below:

- (i), Lesser nationally or internationally recognized prizes or awards;
- (ii), Membership in associations that require outstanding achievements;
- (iii), Published material about the alien in professional or major media;
- (iv), Participation as a judge of the work of others;
- (v), Original contributions of major significance;
- (vi), Authorship of scholarly articles;

- (viii), Leading or critical role for distinguished organizations or establishments; and
- (ix), High remuneration for services.

The Director found that the Petitioner satisfied the four criteria numbered (iv), (v), (vi), and (viii). On appeal, the Petitioner asserts that she also satisfied criterion (i). The Petitioner does not contest the Director's conclusions regarding the other previously claimed criteria, and therefore we consider those issues to be abandoned.[1] Because the Director found that the Petitioner met more than three of the evidentiary criteria, the denial notice includes a final merits determination.

After reviewing all of the evidence in the record, we find that the Petitioner has satisfied only two of the regulatory criteria, as explained below. Because the Director had proceeded to a final merits determination, we will address the related issues after discussing the basic evidentiary criteria.

> *Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.* 8 C.F.R. § 204.5(h)(3)(i)

The Petitioner did not initially claim any awards, but later she received a [redacted] Champion Award from the Centers for Disease Control and Prevention. The Petitioner received this award in late [redacted] 2019, nearly a year after the petition's May 2018 filing date. Therefore, it cannot establish eligibility as of the time of filing. *See* 8 C.F.R. § 103.2(b)(1). As such, we need not discuss this award further.

> *Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.* 8 C.F.R. § 204.5(h)(3)(iv)

We agree with the Director's determination that the Petitioner satisfies this criterion through her participation in peer review for scholarly journals. The significance of this judging activity is an issue for the final merits determination.

> *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).

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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).

The Director concluded, without comment, that the Petitioner had satisfied this criterion. We disagree.

The Petitioner stated that the citations to her published work show her worldwide influence. The Petitioner places particular emphasis on a citation to her work in guidelines published by the World Health Organization (WHO). The record contains incomplete information about this citation. Some of the submitted WHO documentation is in French with no translation. The Petitioner submits a copy of a bibliography page from the WHO publication, showing that her article is one of hundreds cited in the WHO guidelines. But the Petitioner did not establish the context of the citation by submitting the portion of the document that contained that citation. Without this information, we cannot distinguish between a citation that highlights the importance and impact of the Petitioner's work and a citation that mentions the Petitioner's work in passing as background information. The Petitioner does not show that the WHO's guidelines only cite source material of major significance in the field. Furthermore, the significance of a particular article by the Petitioner is not necessarily proportional to the reputation of the highest-profile entity citing that article.

The Petitioner states that "her research has been cited 62 times as well as . . . downloaded hundreds of times," but does not show that this level of attention is consistent with major significance in the field. We note that the figure of 62 citations is the cumulative total for all of her published work at the time of filing. At that time, her most-cited article had amassed 17 citations over eight years. The Petitioner seeks consideration of these figures but does not establish their significance.

A printout from Altmetric indicates that one of the Petitioner's articles earned an "Altmetric Attention Score of 2," which is an "Above-average Attention Score compared to outputs of the same age (55th percentile)." "Above-average," however, is not the same as major significance. By definition, nearly half of all published research falls above the cited threshold of the 55th percentile. The Petitioner did not submit Altmetric attention scores for any of her other articles.

Letters in the record attest to the "immense value" of the Petitioner's research, but the record lacks objective, documentary support for the claims about the extent of the Petitioner's recognition and impact in her field. The letters describe various diseases and how the Petitioner's published research relates to those diseases, but they do not show how the Petitioner's work has had major significance, for example by changing treatment protocols resulting in better outcomes, or allowing for earlier or more reliable diagnoses. U.S. Citizenship and Immigration Services (USCIS) may, in its discretion, use as advisory opinions statements from universities, professional organizations, or other sources submitted in evidence as expert testimony. *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 a foreign national's eligibility. The submission of letters from experts supporting the petition is not presumptive evidence of eligibility. *Id.*

> *Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.* 8 C.F.R. § 204.5(h)(3)(vi)

We agree with the Director that the Petitioner satisfies this criterion through the publication of several scholarly articles.

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 Director concluded, without comment, that the Petitioner had satisfied this criterion. We disagree.

The Petitioner claims that she satisfies this criterion through her employment, as well as editorial positions with various journals. The Petitioner adds that she "has been invited to be the American Academy of Pediatrics [redacted] Champion for Infectious Diseases," but the regulation requires "[e]vidence that the alien *has performed* in a leading or critical role." An invitation for future participation does not suffice.

The Petitioner's peer review work has been considered as evidence of judging the work of others under 8 C.F.R. § 204.5(h)(3)(iv). The Petitioner has not shown that her efforts as a peer reviewer have been leading or critical for the various publishers, rather than routine, lower-level quality control.

Some journals refer to the Petitioner as a member of their editorial boards, but documents in the record do not show that the responsibilities of editorial board members extend beyond evaluation of manuscripts (which is also the role of a peer reviewer). The nature of a position's duties, rather than the title, is the determining factor.[2] The Petitioner's unsalaried service on multiple editorial boards at the same time does not indicate that such service occupies a substantial amount of her time.

Furthermore, the Petitioner has not established that these publishers have distinguished reputations. A publisher's self-serving promotional materials cannot establish that publisher's reputation.

Letters from the Petitioner's employer and former mentors, submitted under the heading "Leading & Critical Roles," describe the Petitioner's residency and postdoctoral training, and call her an asset to the institutions she has served, but these letters do not show that the Petitioner performed in a leading or critical role at the institutions that were training her. In her initial submission, the Petitioner states that she is chief of Pediatric [redacted] at the [redacted] Health clinic, but does not specify what duties the position entails beyond the typical duties of a physician.

After the Director issued a request for evidence in 2019, a letter from [redacted] Health indicated that the Petitioner chaired several committees not mentioned at the time of filing. Most of the documentation submitted to support this assertion dates from after the filing date, the exception being the minutes of a meeting dated May 25, 2018, four days before the filing date. (A letter from [redacted]'s dated April 17, 2018, did not mention that the Petitioner held any committee positions.)

The meeting minutes identify the Petitioner as the chair of the [redacted] Stewardship and [redacted] Prevention Committee at [redacted]'s, which met for 75 minutes every three months in 2018. The Petitioner did not provide sufficient context to show that this committee chair position constituted a leading or critical role for [redacted]'s. Also, the record indicates that [redacted] Health

[2] *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*, 10 (Dec. 22, 2010), http://www.uscis.gov/legal-resources/policy-memoranda.

operates in nine regions, with 21 hospitals of its own and "Community Network" affiliations with 17 others. The Petitioner did not show that her authority extended beyond one region or one hospital within the [redacted] Health system.

An email message from the [redacted] American Academy of Pediatrics invited the Petitioner to join "a committee on Immunizations" that, at the time, did not yet exist. Rather, the message, dated 15 days before the filing of the petition, indicated that the committee "will probably kick off this summer." An invitation to join a committee before its formation is not evidence that the Petitioner had already performed in a leading or critical role as of the filing date.

Because the Petitioner has not established performance in leading or critical roles, we need not consider the question of whether the organizations have distinguished reputations.

B. Final Merits Determination

We do not conclude that the Petitioner has satisfied at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x), and therefore the record does not warrant a final merits determination. Nevertheless, because there have been positive findings regarding three criteria at different points in this proceeding, we will briefly consider the final merits determination already conducted by the Director, and the Petitioner's response on appeal.

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.[3] In this matter, we determine that the Petitioner has not shown her eligibility.

While the record contains several highly complimentary letters about the Petitioner and her various research findings, the Director found that the record does not objectively demonstrate that the Petitioner's work has earned her sustained national or international acclaim or placed her at the top of her field. The Director cited *Caron* with regard to the limitations of testimonial letters. On appeal, the Petitioner does not directly address this finding, focusing instead on her published work and peer review activity.

The Director acknowledged that the Petitioner judged the work of others in her field through peer review of manuscripts submitted for publication or for presentation at conferences, but the Director also found that "peer review is a common feature of the publications process." The Director concluded that the Petitioner's activity as a judge did not reflect sustained national or international acclaim.

On appeal, the Petitioner states that she "serves as an Editor or Editorial Board Member for **nine** prestigious journals [and] as a reviewer for **nineteen** journals." This assertion is somewhat misleading, because many of these journals share a publisher. For example, eight of the journals are published by

[3] See also USCIS Policy Memorandum PM-602-0005.1, *supra*, at 4 (stating that USCIS officers should 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).

SCIENCEDOMAIN International, an open-source publisher headquartered in India. Therefore, the Petitioner's work for these eight journals does not show that her work has independently come to the attention of all these journals. Also, the editorial boards of some SCIENCEDOMAIN journals include dozens of "Academic Editors." The record does not establish the criteria for the editorial board memberships that the Petitioner holds. Furthermore, not every academic publisher is equally reputable. An editorial position with an established, prestigious publisher may carry more weight than one with a newly-established open-source publisher that has yet to earn a significant place in the field. In this regard, the Petitioner has not shown that her editorial board positions reflect or convey acclaim.

The Director also acknowledged the Petitioner's scholarly publications and conference presentations, but found that participation in these activities is an integral element of scientific research, rather than an elite privilege reserved for those at the top of the field. On appeal, the Petitioner notes that "she served primarily as a physician," and asserts that her publication activity "separate[s] her from others in the field" because "[i]t is not the norm for a physician to publish research." The Petitioner does not establish the proportion of practicing physicians who undertake published research. More importantly, a distinction that sets the Petitioner *apart* from others in her field does not necessarily place her *above* others. Publication of one's work provides a potential avenue for earning acclaim, but the publications themselves are not evidence of that acclaim. As noted above, the Petitioner has shown that her published work has attracted some degree of attention in her field, but she has not established that the extent of that attention elevates her to the very top of that 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. We have also 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 that 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 record offers some indication, including developments that occurred after the filing date, that the Petitioner's career is ascendant, as she assumes positions of increasing responsibility and begins to accumulate recognition such as the award she received in 2019. In this instance, however, the apparent upward trajectory of the Petitioner's career does not translate to a finding that she has reached the very top of her field, or was at the very top when she filed the petition in May 2018. A successful and productive career does not compel a finding of sustained national or international acclaim.

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.

ORDER: The appeal is dismissed.