U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 6619013

Date: APR. 29, 2020

Appeal of Nebraska Service Center Decision

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

The Petitioner, a senior fellow, 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 he 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 indicates employment as a senior fellow at the University of [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 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, he 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 he meets an additional 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 contends that the Director "failed to take into account the totality of the evidence and . . . noted the importance of [his] work." Specifically, he references two of his scholarly articles, four recommendation letters, and an article that cited to his work. In order to satisfy the regulation at 8 C.F.R. § 204.5(h)(3)(v), a petitioner must establish that not only has he 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.

As it relates to his scholarly articles published in the *European Journal of Immunology* and *Mucosal Immunology*, the Petitioner argues that his "revolutionary scientific findings represent a significant contribution to immunology because for the first time in human history, [redacted] inducing effective immunity against [Mycoacterium] tuberculosis was meticulously proven

[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).

and documented." While the publication of his articles shows the originality of his research, it does not necessarily demonstrate that his findings have been of major significance in the field. Moreover, 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 1115.

In addition, the record reflects that the Petitioner submitted citatory evidence from *Google Scholar* reflecting that his two articles received 19 and 12 citations, respectively. Again, this criterion requires the Petitioner to establish that he has made original contributions of major significance in the field. Thus, the burden is on the Petitioner to not only identify his original contributions but to also 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 his citations for these published articles are commensurate with contributions of major significance.[2] Here, the Petitioner did not articulate the significance or relevance of the citations to his articles. For example, he did not demonstrate that these citations are unusually high in his field or how they compare to other articles that the field views as having been majorly significant.[3] Although his citations indicate his research has received some attention from the field, the Petitioner did not demonstrate that his citation numbers to these articles represent majorly significant contributions in the field.[4]

Further, as indicated by the Petitioner, he submitted an article authored by [redacted] and [redacted] who cited to his *European Journal of Immunology* article. Although the authors credit the Petitioner's article for "show[ing] that mice lacking the [redacted] in myeloid cells have augmented M. tuberculosis growth and increased inflammation in the lungs," the Petitioner did not establish how a single article that cites to his work demonstrates that his research rises to a level of major significance consistent with this regulatory criterion. While the authors build upon the Petitioner's work in their own research, he did not show the significance of his research in the overall field beyond the authors who cited to his work in a single article.[5]

Likewise, although not argued on appeal, the record contains an article authored by [redacted] [redacted] and [redacted] who cited to his *Mucosal Immunology* article. Again, the Petitioner did not demonstrate the significance of this sample article that cited to his work. Moreover, the article does not distinguish or highlight the Petitioner's written work from the other 169 cited papers. In the case here, the Petitioner did not establish, through citations, that his *Mucosal Immunology* article is viewed by the greater field as a contribution of major significance.

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[2] The Petitioner also did not demonstrate that any of his other scholarly articles resulted in original contributions of major significance in the field.

[3] The record also reflects that the Petitioner submitted documentation from *Google Scholar* regarding the citation of articles from [redacted] and [redacted], whose individual articles garnered citations in the hundreds and thousands.

[4] *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).

[5] *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 whole).

Finally, in regards to the Petitioner's four recommendation letters, they recount his research and findings and indicate their publications in journals. Although they reflect the novelty of his work, they do not sufficiently articulate how his research and findings have impacted the field in a significant manner. For instance, [redacted] stated that "[t]he genetic study found a significant association of [redacted] with pulmonary TB in the population studied. . . . [the Petitioner] published the results of this study in Disease Markers," the Petitioner "showed that a soluble factor, [redacted], is responsible for this inhibition of M. tuberculosis growth in human macrophages and in mice. . . . [the Petitioner] published the results of these studies in the highly prestigious scientific journal PLOS Pathogens," and "[the Petitioner] found that [redacted] by myeloid cells contributes to the protective immune response against M. tuberculosis. . . . [the Petitioner] first authored work, which in 2016 was published in the European Journal of Immunology, a prestigious journal in the field of Immunology." Here, [redacted] did not further elaborate and explain how such findings significantly impacted or influenced the field rather than referencing the publication of the Petitioner's research in journals. Again, publication alone is not sufficient under 8 C.F.R. § 204.5(h)(3)(v). *See Kazarian v. USCIS,* 580 F.3d at 1036, *aff'd in part*, 596 F.3d at 1115.

Furthermore, the letters speculate on the possibility of having an impact at some point in the future, such as "[t]his finding can lead to strategies in development of new [redacted] strains that can stimulate memory [Natural Killer] cells more effectively in humans," "[t]his study can pave way to facilitate development of more effective vaccines and drug therapy," and "the potential his findings will have on alleviating health conditions" [redacted] Moreover, the Petitioner's "novel research in this area suggests that [redacted] is essential for the optimal control of M.tb infection," "[t]his information will facilitate development of improved vaccines and immunotherapeutic strategies to prevent and treat TB, respectively," and "[u]tilizing a scientist of [the Petitioner's] outstanding skill level is a boon for the national interest of the United States due to his ability to meticulously devise new approaches that are promising steps toward improving our understanding of immunology" [redacted]. In addition, "[t]he delineation of the mechanisms by which [redacted] optimizes immune responses against M.tb may facilitate the development of vaccines against this organism and other intracellular pathogens," and his "research will eventually find important beneficial clinical application" [redacted]. While the Petitioner's research may show promise, he did not establish how his work already qualifies as a contribution of major significance in the field, rather than prospective, potential impacts. Here, the significant nature of his work has yet to be determined.

As discussed above, the Petitioner's letters do not contain specific, detailed information explaining the unusual influence or high impact his research or work has had on the overall field. Letters that specifically articulate how a petitioner's contributions are of major significance in the field and its impact on subsequent work add value.[6] 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

[6] *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8-9.

for meeting this criterion.[7] 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 he has made 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 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 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). Although the Petitioner has reviewed manuscripts, conducted research, and authored scholarly articles, the record does not contain sufficient evidence establishing that he is among the upper echelon in his field.

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, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.

[7] *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).