U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 6618699

Date: APR. 29, 2020

Appeal of Nebraska Service Center Decision

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

The Petitioner, a data scientist, 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 data scientist at [redacted] in [redacted] California. 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.

A. Evidentiary 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 argues that he meets this criterion based on his journal reviews, publication in top journals, citation of his work by others, and recommendation letters. 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.

At the outset, the Petitioner asserts that "[t]he journal review records strongly support that [he] has a significant impact in the field of Data Science." As previously discussed, we have already considered the Petitioner's manuscript reviews under the judging criterion at 8 C.F.R. § 204.5(h)(3)(iv).

[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).

Moreover, although he provided several emails requesting him to review papers for journals, he demonstrated that he conducted only two of the reviews prior to the filing of his petition. The Petitioner must establish that eligibility requirements for the immigration benefit have been satisfied from the time of the filing and continuing through adjudication. *See* 8 C.F.R. § 103.2(b)(1). Moreover, although he submitted an email welcoming him to the editorial board of *Computers in Biology and Medicine*, he did show what activities or duties he performed for the journal. Regardless, the Petitioner did not demonstrate how reviewing the work and contributions of others constitutes his original work. In addition, the Petitioner did not support his assertion that his manuscript or editorial review experience resulted in a "significant impact" in the field.

Moreover, the Petitioner claims that he has "published 18 research articles in top-tier professional journals and conference proceedings" and "many of the journals are top 1% journals worldwide." Again, we considered the Petitioner's publication history under the scholarly articles criterion at 8 C.F.R. § 204.5(h)(3)(vi). Moreover, the Petitioner did not support the record regarding his journal ranking claims. Regardless, the Petitioner has not demonstrated that publication of his articles in highly ranked journals or presentation of his work at conferences establish that the field considers his research to be an original contribution of major significance. Moreover, a publication that bears a high ranking or impact factor reflects the publication's overall citation rate. It does not show an author's influence or the impact of research in the field or that every article published in a highly ranked journal automatically indicates a contribution of major significance. 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. Here, the Petitioner did not establish that publication in a popular or highly ranked journal or presentation at a distinguished conference alone demonstrates a contribution of major significance in the field.

Furthermore, as it relates to the citation of his work, the record reflects that the Petitioner initially submitted evidence from Google Scholar showing that his five highest cited articles received 1,132 (*The Astrophysical Journal Supplement Series*), 56 (*Astronomy and Computing*), 36 (*The Astronomical Journal*), 29 (*The Astronomical Journal*), 16 (*The Astrophysical Journal*), and 15 citations (*Monthly Notices of the Royal Astronomical Society*), respectively. In addition, the Petitioner indicated that these citations included self-citations; in other words, the figures included his citations in his articles to his own work. Moreover, the Petitioner provided his citation overview from Scopus that excluded his self-citations revising the figures: 408 (*The Astrophysical Journal Supplement Series*), 22 (*Astronomy and Computing*), 5 (*The Astronomical Journal*), 4 (*The Astrophysical Journal*), and 6 (*Monthly Notices of the Royal Astronomical Society*), respectively. Here, when factoring only his independent citations, the number of citations to his articles are drastically reduced. Further, in response to the Director's request for evidence, the Petitioner provided revised figures from Google Scholar. However, the Petitioner did not differentiate the new citations between independent and self-citations, nor did he show whether the increased citations occurred after the filing of his petition. *See* 8 C.F.R. § 103.2(b)(1).

Again, this criterion requires the Petitioner to establish that he has made original contributions 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 the number of citations for any of his published articles are commensurate with contributions of major

significance. 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. Although his citations indicate the some in the field have referenced his work, the Petitioner did not establish that his citation numbers to his individual articles rise to the level of major significance consistent with this regulatory criterion.[2]

In addition, the Petitioner argues that "[m]any of [his] publications . . . are among the top 0.01% to 1% highly cited papers." The record reflects that the Petitioner provided data from Clarivate Analytics regarding baseline citation rates and percentiles by year of publication for all fields, including chemistry, microbiology, and psychology. The comparative ranking to baseline or average citation rates to all fields, however, does not automatically establish majorly significant contributions in his field.[3] Once again, the issue for this criterion is whether the Petitioner has made original contributions of major significance in the field rather than where his citation rates rank among the averages of others in any field. Here, a more appropriate analysis, for example, would be to compare the Petitioner's citations to other similarly, highly cited articles that his field views as having been of major significance, as well as factoring in other corroborating evidence. The Petitioner has not demonstrated that his written work, using Clarivate Analytics methodology through citation numbers and percentiles, resulted in original contributions of major significance in the field.

Regarding the highest, independently cited article, '[redacted] Data Releases of the Sloan Digital Sky Survey: Final Data from SDSS-III," published in *The Astrophysical Journal Supplement Series*, the record reflects that he was one of over 300 authors listed in the paper. However, the Petitioner did not establish which contributions he made to the article. Moreover, the Petitioner did not demonstrate which portions of the article that pertained to his work have been specifically cited by others. Further, while [redacted] indicated that she collaborated with the Petitioner during the Sloan Digital Sky Survey (SDSS), she did not explain what he contributed to the article and how it is of major significance in the field. Instead, [redacted] stated that during his graduate study at [redacted] University, the Petitioner "used SDSS data to perform research projects on many different topics, including galaxy clustering, [redacted] cosmology, as well as the Galactic structures." Here, [redacted] did not elaborate and describe what, if any, of his research projects or findings were included in the article. Moreover, [redacted] provided that "[u]sing this dataset, [the Petitioner] built the biggest [redacted] in the world, which contain more than ten thousand [redacted]" However, [redacted] did not show whether the [redacted] were included as part of the paper or the Petitioner created the [redacted] afterwards as the result of the SDDS.

Likewise, the Petitioner presented other reference letters indicating that he worked on SDDS without showing his contributions to the project and whether they have been majorly significant in the field.

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[2] *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).

[3] For instance, according to the data from Clarivate Analytics, papers published in 2018 receiving only 17, 7, and 3 citations are claimed to be in the top 0.01%, 0.10%, and 1.00%, respectively The Petitioner has not demonstrated that papers with such citation counts have necessarily had a major, significant impact or influence in the field as evidenced by being among the top percentile of most highly cited articles according to year of publication.

Instead, they reference the [redacted] For instance, [redacted] opined that "[f]inding and analyzing [redacted] is a very challenging task, but [the Petitioner] successfully built the largest ever [redacted] from the SDSS data," and "[t]he results have been published in top ranked scientific journals and have been presented at multiple international conferences." Here, [redacted] did not explain how building the [redacted] have significantly impacted or influenced the field in a major way. Again, publication in a journal or presentation at a conference is not in-and-of itself sufficient to demonstrate an original contribution of major significance in the field. *See Kazarian,* 580 F.3d at 1036, *aff'd in part*, 596 F.3d at 1115.

Similarly, [redacted] who was the Petitioner's advisor at [redacted] University and co-authored the SDSS paper, discussed the Petitioner's research and findings but did not explain how they have been of major significance in the field. Rather, [redacted] made conclusory statements without showing how the Petitioner's work has impacted the field. For example, [redacted] claimed that "[t]hese [redacted] are very valuable for investigating galaxy evolution, structure formation, and cosmology, thus they are also a unique contributions to the SDSS collaboration," and "[the Petitioner] constructed a large set of mock [redacted] using hundreds of N-body numerical simulations and thousands of [redacted] . . . His contribution was not just original but essential." Here, [redacted] did not provide any further explanation demonstrating why he thought the Petitioner's contribution was "essential." In addition, [redacted] described other projects by the Petitioner, such as studying galactic structure with the [redacted] and constraining [redacted] with higher order moments, but he did not indicate or show their major significance in the field.

Moreover, the record contains letters from [redacted] and [redacted] who described the Petitioner's work at his employer, [redacted] For example, they stated that the Petitioner works "on areas like advanced time series analysis, information extraction, quantitative information analysis, and autonomous text summarization," and he "has played a key role in the algorithm development, and his work has been successfully implemented into [redacted]'s core products." Although the letters generally indicate the Petitioner's work at his employer, they do not include sufficient information explaining how his work at [redacted] has significantly impacted, influenced, or affected the overall field beyond his employer.[4]

Here, 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.[5] Letters that specifically articulate how a petitioner's contributions are of major significance to 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 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).

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[4] *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).

[5] Although we discussed a sampling of letters, we have reviewed and considered each one.

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

[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

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.

B. O-1 Nonimmigrant Status

We note that the record reflects that the Petitioner received 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 I-140 immigrant petitions are 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), *aff'd*, 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. *See La. Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, at *2 (E.D. La. 2000).

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.

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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).

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.