U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 4581819

Date: AUG. 3, 2020

Appeal of Texas Service Center Decision

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

The Petitioner, a physiologist, 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 a one-time achievement (a major, internationally recognized award) or met at least three of the required evidentiary criteria.

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) (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).

II. ANALYSIS

The Petitioner is a physiologist whose research has focused on using [redacted] biology to develop new treatments for existing illnesses. The record reflects that he holds a M.S. and a Ph.D. in physiology from [redacted] University. At the time of filing he was a visiting professor at the University [redacted][1]

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 alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Director found that the Petitioner met two of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), relating to judging and scholarly articles. The record contains e-mails confirming that the Petitioner served as a peer reviewer for research articles appearing in *Environmental Health Perspectives, Scientific Reports,* and others. It also reflects that the Petitioner has published scholarly articles in professional publications such as *Journal of Endocrinology*, *Molecular Therapy: Nucleic Acids*, and *Cancer Prevention Research.* Therefore we agree with the Director that the Petitioner meets the criteria relating to judging and to scholarly articles at 8 C.F.R. § 204.5(h)(3)(iv) and (vi).

On appeal, the Petitioner asserts that he also meets the evidentiary criteria relating to original contributions of major significance. For the reasons discussed below, we find that he does not meet this additional regulatory criterion.

> *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 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. For

[1] The record reflects that the Petitioner had previously been granted H-1B status.

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 Director determined that, while the record reflects the Petitioner's work is original in nature, it did not sufficiently establish that it was of major significance in the field. On appeal, the Petitioner submits a brief, a Google Scholar document containing his citation record, a Thomson/Reuters Clarivate Analytics report, and a statement from Thomas/Reuters Analytics discussing skew in statistical data. He asserts that the Director did not properly evaluate his citatory data, research papers referencing his work, or the advisory letters in the record, according to the requisite burden of proof. Specifically, the Petitioner argues that the Director neither fully discussed this evidence nor addressed how he weighted it in determining that the record did not establish the Petitioner's eligibility for the classification sought.

On appeal, the Petitioner first references the number of citations his research has garnered as evidence that his original contributions have risen to the level of major significance. He notes that "**at least six of [his] articles have earned more citations than 90 % of other researchers who have published in the same field and time period.**"[2] (emphasis in original.) 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. The Petitioner has not submitted evidence establishing that a comparison of his citation rates to an average of others in the field establishes the impact of his research. Accordingly he has not shown that his research has widely impacted the field in a manner reflecting major significance.

The Petitioner further argues on appeal that his original research has been of major significance because his articles have been published in "top-ranked journals" as reflected by their impact factor, such as *Leukemia* and *Cancer Research*. A high impact factor reflects the publication's overall citation rate. However, the Petitioner does not submit evidence demonstrating that a publication's high impact factor indicates the influence or impact of his research on the field. The Petitioner therefore has not demonstrated that publication of his work in highly ranked journals shows that the field considers his research to be an original contribution of major significance.

The Petitioner also asserts that the publication of his articles in these journals shows that the editors of these journals view his original contributions as "majorly significant." However, the record lacks evidence corroborating this assertion. Repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *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); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). Moreover, USCIS need not accept primarily conclusory statements. *1756,*

[2] We note the Petitioner's argument on appeal that the Director erroneously dismissed these percentiles are based on the grounds that the underlying baseline citation rates are frequently skewed. The Petitioner asserts that skew in these rates "***does not impact the veracity of the data.***" (emphasis in original). The Thomson-Reuters document presented on appeal supports this assertion, stating this skew describes "a natural phenomenon of citation distributions: a few papers receive many cites, whereas most papers receive few or no cites" but that these rates "do not factor into the creation of" the percentiles, and are provided only for context. We note, as well, that the document indicates that these metrics are an evaluation of the "performance of the papers," rather than that of the authors.

Inc. v. The U.S. Att'y Gen., 745 F. Supp. 9, 15 (D.C. Dist. 1990). Without evidence from the journals' editors expressing their opinions on the significance of his work, the Petitioner's unsupported statement is not sufficient to show that the editors' selection of his work for publication demonstrates its major significance.

The Petitioner argues on appeal that "the major significance of [his] work is also evident from the ***manner*** in which others in his field have relied on his work" (emphasis in original) and references the original research of others in the record.[3] He references one *Postgraduate Medical Journal* article, [redacted] noting that it identifies his work as a one of four "Key references." Publications are not sufficient under 8 C.F.R. § 204.5(h)(3)(v) absent evidence that they were of "major significance." *See Kazarian,* 580 F.3d at 1036. Although funded and published work may be "original," this fact alone is not sufficient to establish that the work is of major significance. For example, peer-reviewed presentations at academic symposia or 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 alien's work as authoritative in the field, may be probative of the significance of the alien's contributions to the field of endeavor.[4] However, the Petitioner does not submit evidence establishing that this one article reflects that his research has provoked widespread commentary or has otherwise been widely recognized in the field of physiology. Without this evidence, the article is not sufficient to establish that the Petitioner's research constitutes an original contribution of major significance in his field of endeavor.

The remainder of these research articles in the record do not distinguish the Petitioner's written work from the other articles cited or otherwise differentiate him from other researchers. For example, the article, [redacted] cites to the Petitioner's research in conjunction with others without distinguishing him or his research from the other researchers. The Petitioner does not provide evidence showing how being cited jointly with the work of other researchers indicates that his research has widely impacted the field. Therefore he has not demonstrated that his original contributions are of major significance in the field.

The Petitioner further argues on appeal that the frequency with which he is cited in research articles is indicative of the major significance of his contributions in the field.[5] For example, he notes that his work has been cited 11 times in the article [redacted]" and at least five times in other articles in the record. As previously noted, publications are not sufficient under 8 C.F.R. § 204.5(h)(3)(v) absent evidence that they were of "major significance." *See Kazarian,* 580 F.3d at 1036. Further, as discussed above, while work may be "original," this fact alone is not sufficient to establish that the work is of major significance. For example, peer-reviewed presentations at academic symposia or peer-reviewed

[3] While we discuss only a sampling of these articles here, we have reviewed all of the research presented in the record.

[4] *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/laws/policy-memoranda.

[5] The Petitioner notes that in his November 2018 response to the Director's request for evidence, he provided articles wherein his research was cited 11, 3, 3, 5, 3, 4, 3, and 5 times.

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 alien's work as authoritative in the field, may be probative of the significance of the alien's contributions to the field of endeavor.[6] The Petitioner does not provide evidence establishing how being cited 11 or fewer times in research articles demonstrates that his work has provoked widespread commentary or received notice from others working in the field. Accordingly, he has not provided evidence sufficient to demonstrate that his work is of major significance in his field.

Advisory letters in the record confirm the original nature of the Petitioner's research but are not sufficient to establish that these original contributions have been of major significance in the field. Letters that specifically articulate how a petitioner's contributions are of major significance to the field and its impact on subsequent work add value. 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] [redacted], [redacted] Department of Biology and Biochemistry at the University [redacted], discusses the Petitioner's research into the role of [redacted] reproductive system, noting that he [redacted]" was "one of the first scientists to clone this receptor," and "demonstrated that it is present in the [redacted]" [redacted] states that the Petitioner's work on [redacted] showed that [redacted] reproductive system." He also discusses the Petitioner's 2013 *General and Comparative Endocrinology* article, noting that it "sheds new light on the relationship between [redacted]," [redacted] Principal Investigator at the [redacted] Institute of Biochemistry and Cell Biology, discusses the Petitioner's work in [redacted], noting that the technique developed by the Petitioner "overcomes the shortcomings associated with [redacted] therapies for muscle disorders and is therefore of great interest to his field."

While these letters confirm the originality of the Petitioner's work, they do not provide detailed examples showing how it has been widely implemented in or has widely impacted the field of physiology or has otherwise been of major significance in the field. Without additional detail explaining his accomplishments as they relate to new or innovative techniques or findings, the letters do not establish that the Petitioner's work has widely impacted the field such that it rises to the level of major significance.

Two additional letters do provide descriptions of how others have built upon his original work in research studies. [redacted] Associate Professor of Medicine, Division of [redacted] University [redacted], addresses the Petitioner's research related to [redacted] and its effectiveness in fighting cancers. He explains the Petitioner "investigated the molecular mechanisms behind this effect," referencing a clinical study in Italy in which the researchers' "strategy of using [redacted] as a [redacted] rather than [redacted] was specifically derived from [the Petitioner's] work on this matter." He concludes that, as this study was "able to show that [redacted] does inhibit growth for certain types of tumors," it demonstrates that the Petitioner's research is "leading directly to improvements in care for cancer patients."

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

[7] *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 9; *see also Kazarian*, 580 F.3d at 1036 (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).

[redacted] Head of Neuroscience and Director of the [redacted] at [redacted] University, Malaysia, discusses the Petitioner's work on [redacted] He notes that a group working for the [redacted] National Research Council "built on [the Petitioner's] work by investigating [redacted] activity in European sea bass," and that the Petitioner's research "influenced researchers... in their study of [redacted]'s impact on the electrical activity of hormone neurons."

While both [redacted] and [redacted] provide detailed examples showing how the Petitioner's research has been used by other researchers, they do not explain or demonstrate how this is indicative that it has widely impacted the overall field.[8] In the absence of this additional information, these letters do not establish the major significance of the Petitioner's work in the field of physiology.

For the foregoing reasons, the Petitioner has not demonstrated that he meets this criterion.

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).

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.

[8] *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).