U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 9777396

Date: AUG. 25, 2020

Appeal of Texas Service Center Decision

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

The Petitioner, a patent agent, 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 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 patent officer with [redacted] in [redacted] Massachusetts. Because the Petitioner has not claimed 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 three additional criteria, 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).

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.

The Petitioner argues that his "publishing of numerous, original research contributions in high-impact journal supports the 'major significance' of his research findings." Moreover, the Petitioner claims that "[p]ublishing even one time in a high-impact journal would show and document such significance," and he "has done so every time with all thirteen publications." However, the Petitioner

[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).

did not demonstrate that publication of articles in highly ranked journals automatically establishes original contributions 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 alone demonstrates a contribution of major significance in the field. For example, the Petitioner did not explain how an article published in a "high-impact" journal that resulted in receiving little no attention or otherwise did not influence the field would routinely qualify as being majorly significant in the field.

Moreover, the Petitioner contends that "his publications have garnered special attention or recognition from international publishers and periodicals, in ways uncommon and particularly celebratory; this due to and highlighting their major significance." Specifically, the Petitioner references his 2016 paper published in Chemistry – A European Journal that was identified as a [redacted]' by the editors of the journal.[2] In addition, the Petitioner indicates that his 2019 ChemMedChem article [redacted] the [redacted] journal. Further, the Petitioner points out that Synfacts [redacted] 2017 Chemical Communications and 2018 Nature Chemistry articles.[3] Similar to the discussion above, the Petitioner did not establish that an article's selection as [redacted] journal, or [redacted] Synfacts necessarily automatically shows a contribution of major significance in the field. While the selection, [redacted] may signify that the editors or publishers' opinions regarding the possibility or even actual importance of the research, the act alone does demonstrate the major significance of the research without evidence showing the influence in the field. Again, for instance, the Petitioner did not explain how an article's [redacted] that ultimately did not yield any attention or otherwise did not impact the field would normally qualify as being majorly significant in the field.

In addition, the record reflects that the Petitioner submitted citatory evidence from Google Scholar reflecting that his 2016 [redacted] article received 23 citations, 2017 and 2018 Synfacts articles received 18 and 40 citations, respectively, and his 2019 cover article did not receive any citations. Generally, citations can serve as an indication that the field has taken interest in a petitioner's research

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[2] The Petitioner provides a screenshot from onlinelibrary.wiley.com indicating that [redacted] are chosen by the Editors [of Chemistry – A European Journal] for their importance in a rapidly evolving field of high current interest."

[3] The Petitioner submits screenshots from thieme.de reflecting:

> In SYNFACTS, current research results in [redacted] from the primary literature are screened, selected, evaluated, summarized, and enriched with personal comments by experts in their fields on a monthly basis.
>
> SYNFACTS addresses the needs of [redacted] in academia (including students) and industry by helping them to know, learn, and think more about their own field as well as neighboring disciplines. SYNFACTS stimulates the reader's research and the development of exciting new ideas. The journal is also aiming to support teaching and lecturing activities as well as examination preparation.
>
> SYNFACTS offers the reader summaries of the most significant current results from the primary literature in the following thematic categories. . . .

or written work. However, the Petitioner has not sufficiently shown that the citations to his work are commensurate with contributions of major significance.[4] 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 work rise to the level of major significance consistent with this regulatory criterion.[5]

Furthermore, even considering both the publication selections and citation figures, the Petitioner did not establish that the articles or research findings reflect majorly significant contributions. In fact, as indicated, while ChemMedChem featured his article on the cover, the Petitioner did not demonstrate that others have cited to or been influenced by his work, showing that the appearance on a journal cover does not automatically establish a contribution of major significance in the field.

The Petitioner also argues that his submission of 11 recommendation letters "were extensive in number," and "[t]hey also verified, in [sic] informed, [in] expert-caliber and detailed ways, the 'major significance' element." Although the letters recount the Petitioner's research and findings and make broad statements regarding their significance in the field, they do contain sufficient information detailing how his work has been of major significance. For instance, [redacted] indicated that the Petitioner's "contribution to the chemical synthesis of [redacted] provides researchers in the drug discovery field with a versatile chemistry tool to access this privileged class of [redacted] that are otherwise inaccessible."[6] [redacted] for example, did not further elaborate and identify which molecules have been accessed and the drugs that were discovered using the Petitioner's research, signifying a contribution of major significance.

Likewise, [redacted] stated that "[t]his study is the first demonstration of remote [redacted] reactions without the involvement of external oxidants or reductants, and for the first time provides both experimental and theoretical evidence for the existence of [redacted] intermediates in [redacted] reactions." While the letter shows the originality of the Petitioner's research, [redacted] did not elaborate and explain how this study has impacted the field in a majorly, significant manner. [redacted], for instance, did not demonstrate that the Petitioner's study has been widely applied throughout the field, nor did he articulate the outcomes or results in the field from his study.

In fact, the letters speculate on the possibility and potential of his research in the field rather than how his work has already been of major significance in the field. For example, "key [redacted] intermediates . . . can serve as valuable tools for medicinal chemistry" [redacted]; "these new [redacted] inhibitors show promising ability to cross the [redacted]" and "[the Petitioner's] findings are very exciting because these novel [redacted] tracers can be used in PET

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

[5] 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).

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

imaging of patients with neurological disorders" [redacted], "[the Petitioner's] work in developing [redacted] method hold potential for tremendous impact on our society" [redacted] "his original findings will enable the use of [redacted] and [redacted] for labeling organic molecules" [redacted], "[the Petitioner] has conducted invaluable research that will change the future of the field to the benefit of the people of America and the world" [redacted], and "this work will also have lasting impacts on the field of [redacted] organic chemistry and the pharmaceutical industry" [redacted]). (emphasis added). Although the letters opine on the possibility of the influence of the Petitioner's research and work at some time in the future, they do not demonstrate how his work has already impacted, influenced, or affected the field in a majorly significant manner.

Furthermore, the Petitioner references letters from [redacted] and [redacted] as examples of how "fundamental [his] research and record of discovery have been to their own work." Indeed, [redacted] discussed that he "recently highlighted one of [the Petitioner's] papers in a publication by my own research group," [redacted] stated that the Petitioner's "work has greatly impacted my own, and [redacted] indicated that he conducted his "own evaluation of the [the Petitioner's] work." While the letters reflect that these individuals built upon the Petitioner's work in their own research, they do not show the significance of his research in the overall field beyond their own research and written findings.[7] For example, [redacted] concluded that "[b]uilding on [the Petitioner's] prior work, my research group and collaborators at [redacted] developed a highly effective, user-friendly [redacted] method for the [redacted] another important class of pharmaceutical [redacted] which directly correspond to active pharmaceuticals." Although he cites to the Petitioner's paper as "an important exception" in the reference section of his Journal of the American Chemical Society article, [redacted] did not elaborate and explain how the Petitioner's paper has affected the field in a majorly significant way, or even the level of significance of his own research in the field, beyond developing a new method and publishing in a journal. Similarly, while the Petitioner argues that an Organic Letters article referred to his research as a "breakthrough," the article does not provide any further explanation or show the major significance in the field beyond the article.

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.[8] Letters that specifically articulate how a petitioner's contributions are of major significance to the field and its impact on subsequent work add value.[9] 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.[10] 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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[7] See USCIS Policy Memorandum PM 602-0005.1, supra, at 8-9; see also Visinscaia v. Beers, 4 F. Supp. 3d 126, 134-35 (D.D.C. 2013) (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).

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

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

[10] 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).

For the reasons discussed above, considered both individually and collectively, the Petitioner has not shown that his original contributions rise to the level 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).

As it relates to a leading role, the evidence must establish that the alien is or was a leader. A title, with appropriate matching duties, can help to establish if a role is or was, in fact, leading.[11] Regarding a critical role, the evidence must demonstrate that an alien contributed in a way that is of significant importance to the outcome of the organization or establishment's activities. It is not the title of a petitioner's role, but rather the performance in the role that determines whether the role is or was critical.[12]

The Petitioner argues that he meets this criterion based on his role at [redacted] and [redacted], and references previously discussed letters from [redacted] and [redacted] The letters, however, do not reflect that the Petitioner performed in a leading role, nor do they show that he performed in a critical role. Moreover, the letters briefly acknowledge his role at [redacted] and [redacted] but do not provide specific, detailed information demonstrating the leading or critical nature of his role.[13] Instead, the letters discuss the Petitioner's original research and work without making any claims of the Petitioner serving in a leadership position or crediting him for being responsible for the successes or outcomes of the school or hospital's activities.

Relating to [redacted]'s letter, he indicated that the Petitioner "joined the [redacted] program as a Postdoctoral Fellow in the Division of [redacted], and the Department of [redacted]." Here, the Petitioner did not demonstrate how serving in the role of a postdoctoral fellow in a division of [redacted] or department at [redacted] shows his leading position to the hospital or school, nor did he establish his position in the overall hierarchy of the institutions. Furthermore, while [redacted] stated that he "met with [the Petitioner] in collaborative research meetings, heard [his] research presentations, and watched with approval and admiration as he has worked closely with my colleague [redacted] in the positron emission tomography (PET) core facility at [redacted] to make groundbreaking advancements in PET [redacted]" he did not articulate how performing research within a division of department resulted in critical or essential outcomes for [redacted] or [redacted]

Similarly, [redacted] stated that he "was the direct supervisor for [the Petitioner] during his 2-year postdoctoral fellowship in [his] program at [redacted] and [redacted]." Further, he indicated that "[i]n [his] laboratory, [the Petitioner] produced 2 more first-author publications in Chemical Communications on new applications with [redacted]" and [o]ur laboratory had no prior expertise with this sub-molecular unit, so [the Petitioner] paved the way for our team to continue productive work in this area." Again, [redacted] did not claim that the Petitioner's position as a postdoctoral fellow

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[11] See USCIS Policy Memorandum PM-602-0005.1, supra, at 10.

[12] Id.

[13] See USCIS Policy Memorandum PM 602-0005.1, supra, at 10 (stating that letters from individuals with personal knowledge of the significance of a petitioner's leading or critical role can be particularly helpful in making this determination as long as the letters contain detailed and probative information that specifically addresses how the role for the organization or establishment was leading or critical).

constituted a leading role for [redacted] or [redacted] Moreover, although [redacted] credited the Petitioner for paving the way in his laboratory, he did not establish how such work in a laboratory translated into a critical role for the school or hospital. Likewise, while the Petitioner authored articles regarding his research in the laboratory, [redacted] did not explain how such authorship, publication, or research was critical to [redacted] or [redacted]'s activities.

Accordingly, the Petitioner did not show that he meets this criterion.

> Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field. 8 C.F.R. § 204.5(h)(3)(ix).

The Petitioner claims eligibility for this criterion based on his salary with [redacted] as a patent agent. Moreover, the Petitioner argues that his salary should be compared to the salaries of chemists since his specialization as a patent agent is in chemistry. Furthermore, the Petitioner provides screenshots from flcdatacenter.com and contends that when entering "patent" in the Foreign Labor Certificate Data Center Online Wage Library, several occupations match the search, including microsystem engineers, mechanical drafters, chemists, lawyers, and legal support workers. In addition, the Petitioner provides a screenshot from [redacted] advertising for an "Intellectual Property – Patent Agent or Junior Patent Associate (Chemistry)" that requires "one to three years of experience and a strong technical background in organic chemistry." He also offers the requirements to practice matters before the United States Patent and Trademark Office, including a bachelor's degree in various subjects, such as biochemistry, general chemistry, and organic chemistry.

In order to meet this criterion, an alien must demonstrate that his salary or remuneration is high relative to the compensation paid to others working in the field.[14] In the case here, the Petitioner is employed as a chemistry patent agent; and therefore, he must establish that he commands a high salary in relation to other chemistry patent agents. Both precedent and case law support this application of 8 C.F.R. § 204.5(h)(3)(ix). See Matter of Price, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994) (considering a professional golfer's earnings versus other PGA Tour golfers); see also Skokos v. U.S. Dept. of Homeland Sec., 420 F. App'x 712, 713-14 (9th Cir. 2011) (finding salary information for those performing lesser duties is not a comparison to others in the field); Grimson v. INS, 934 F. Supp. 965, 968 (N.D. Ill. 1996) (considering NHL enforcer's salary versus other NHL enforcers); Muni v. INS, 891 F. Supp. 440, 444-45 (N. D. Ill. 1995) (comparing salary of NHL defensive player to salary of other NHL defensemen). Although he previously submitted salary information relating to chemists, the Petitioner has not shown he commands a high salary in relation to other chemistry patent agents.

For these reasons, the Petitioner did not establish that he fulfills this criterion.

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,

[14] See USCIS Policy Memorandum PM-602-0005.1, supra, at 11.

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 published his work, 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.