U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 5962784

Date: JAN. 16, 2020

Appeal of Texas Service Center Decision

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

The Petitioner, a research chemist, 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 satisfied at least three of ten initial evidentiary criteria, as required. The Director also found that the Petitioner did not establish that his entry into the United States will substantially benefit prospectively the United States. 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. We decline the Petitioner's request for oral argument. 8 C.F.R. § 103.3(b).

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

(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 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

The Petitioner earned his bachelor's degree at the University of [redacted], and his doctorate at the University of [redacted], where he was working as a postdoctoral researcher at the time he filed the petition. He later began working as a research associate at the University of [redacted] The record does not reveal his current employment.[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 ten evidentiary criteria: the fourth, relating to judging the work of others, and the sixth, relating to authorship of scholarly articles. On appeal, the Petitioner asserts that he also meets the third criterion, relating to published material about the alien, and the fifth, relating to original contributions of major significance. After reviewing all of the evidence in the record, we find that the Petitioner has also satisfied the fifth criterion, relating to original contributions of major significance in the field.

The Petitioner states that "two of his notable discoveries" are "a new method of decontaminating [redacted] in water" and "a [redacted] cluster having a guest-host relationship," the latter of which "has

[1] In September 2018, the Petitioner submitted printouts from [redacted]'s website, identifying him as a research associate there. The web addresses of the submitted printouts are http:[redacted] and https:/[redacted]. As of December 2019, those pages are no longer available, indicating that the Petitioner left that institution.

significant medical, commercial, and environmental applications." Professors from [redacted] and [redacted] provided technical details about the nature of the Petitioner's contributions to those discoveries, and one of the scholarly articles arising from his research at [redacted] has been heavily cited, indicating widespread attention from others in the field. The record sufficiently establishes the nature and significance of contributions that the Petitioner made to research connected to his doctoral research at [redacted] and we withdraw the Director's contrary finding.

As the Petitioner has demonstrated that he satisfies three criteria, we will evaluate the totality of the evidence in the context of the final merits determination below.

B. Final Merits Determination

As the Petitioner submitted the requisite initial evidence, we will evaluate whether he has demonstrated, by a preponderance of the evidence, his sustained national or international acclaim and that he is one of the small percentage at the very top of the field of endeavor, and that his achievements have been recognized in the field through extensive documentation. 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.[2] In this matter, we determine that the Petitioner has not shown his eligibility.

During this proceeding, the Petitioner has noted the citation of his published work. The Petitioner's research while he was a doctoral student at [redacted] led to a heavily-cited article published in the *Journal of the American Chemical Society* (*JACS*) in 2011. One such article, however, does not establish a pattern of producing heavily-cited research consistent with the *sustained* acclaim that the statute demands. At the time of filing, no other article by the Petitioner had accumulated more than 14 citations. The Petitioner contends that even the less-cited articles have been "cited at a rate far exceeding the average." The classification requires an individual to be at the very top of the field, which is a much higher threshold than "exceeding the average."

The Petitioner states that his "major scientific contributions have provoked widespread commentary," but the Petitioner identifies only one source of this claimed commentary. Shortly after the Petitioner's most-cited article appeared in *JACS*, it was "the subject of a feature article within the newsletter of the American Chemical Society, *Chemical & Engineering News* (C&EN)."

The Director noted that the Petitioner's name does not appear in the *C&EN* article, and therefore that article cannot contribute to the Petitioner's acclaim in the field. Furthermore, as the Petitioner has acknowledged, the American Chemical Society (ACS) publishes both the *JACS* and *C&EN*. Therefore, the *C&EN* article essentially amounts to a promotional press release, by which the ACS informed ACS members of a new article in an ACS journal. On appeal, the Petitioner maintains that *C&EN* "is not marketing material," but he has not shown that his 2011 *JACS* article attracted any media attention beyond

[2] See also 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 4 (Dec. 22, 2010), https://www.uscis.gov/policymanual/HTML/PolicyManual.html (stating that USCIS officers should then 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).

its own publisher (the ACS). A single ten-sentence article does not support the Petitioner's contention that "his work has been discussed in detail by major trade publications."

The Petitioner's earlier work at [redacted] led to a patent application, filed in 2011 and approved in 2013. The Petitioner is the third of three named co-authors of that application. The patent concerned a "[redacted] compound" that could be used to remove [redacted] contaminants, for example in [redacted]. The record attests more to the potential of this work than to its existing, demonstrated impact. A patent attests to an invention's originality, but not to its impact, importance, or recognition.

Asked to establish the extent, if any, to which mining companies have actually been using the patented technology, the Petitioner showed that [redacted] licensed the patent to [redacted], which then assigned the license to [redacted], an environmental remediation company. The Petitioner asserts that this license shows that the "patent is being used by one of the world's leading sustainable technologies companies to remediate [redacted]"

The record indicates that [redacted] and [redacted] did not specifically seek to license the patent to which the Petitioner contributed. Rather, that license fell under a larger agreement that had been in place since 2006, before the Petitioner worked on the project. An article published in *Johnson Matthey Technology Review* referred to the Petitioner's patent and stated: [redacted]" This article was published in 2015, several years after the Petitioner left [redacted]. The article has no author credit, but it begins with biographical information about a [redacted] professor and ends with an acknowledgment of a [redacted] graduate student's "work on this project," suggesting that the article originated from [redacted]. The record shows that [redacted] has sought to commercialize several years of research results from [redacted], including but not limited to the Petitioner's contributions to that research. The record does not show that the Petitioner's involvement in research at [redacted] has resulted in sustained national or international acclaim, or placed him at the top of his field. Rather, the Petitioner appears to have been one of many productive contributors to an ongoing research program that predated his work at [redacted] and continued after he left that institution.

The Petitioner asserts that the Director should have given more weight to letters from various individuals in the Petitioner's field. 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.* His selection of individuals who are familiar with his work does not imply that his work is known widely enough to be consistent with national or international acclaim. The Petitioner has not shown that these individuals, most of whom have personally supervised the Petitioner's research, represent a consensus or representative cross-section of his field.

Also, the letters focused on the significance of particular contributions. For example, an associate professor at [redacted] Technological University, [redacted] discussed the Petitioner's patent and a more recent article regarding [redacted] The Petitioner's Ph.D. thesis advisor at [redacted] stated that the Petitioner's technical expertise "gives him a singular value to the field that few other scientists can replicate." These individuals offered the subjective assessment that the Petitioner's discoveries are of the highest caliber, but this is not tantamount to sustained national or international

acclaim at the very top of the field. Likewise, the Petitioner's peer review work is indicative of subject matter expertise rather than sustained national or international acclaim. His Ph.D. thesis advisor is also the editor-in-chief of one of the journals for which he has peer-reviewed manuscripts.

The submitted evidence shows that the Petitioner's graduate study and postdoctoral training have been productive, and have resulted in some important findings, but the Petitioner has not established that he has earned sustained national or international acclaim, or that he has reached the very top of his field.

Because the Petitioner has not reached the threshold requirement of sustained acclaim, we need not address the Director's secondary finding substantial prospective benefit to the United States. We therefore reserve that issue.

III. CONCLUSION

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). Here, the Petitioner has shown that, during his training, he belonged to research teams performing important work, but he has not established that he set the direction for that work or made findings that the teams would not have made without him.

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.