U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 6043242

Date: JAN. 16, 2020

Appeal of Nebraska Service Center Decision

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

The Petitioner, a plant pathology researcher, 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 although the record established that the Petitioner satisfied the initial evidentiary requirements, it did not establish, as required, that the Petitioner has sustained national or international acclaim and is one of that small percentage at the very top of the field. 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.

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,
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> (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 is a research associate at the University of [redacted] whose recent work has focused on how plants fight viruses and other pathogens. Previously, he earned his master's degree at [redacted] and his doctorate at [redacted] The Petitioner remained at [redacted] for three more years as a postdoctoral research associate.

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 four of the evidentiary criteria:

> *Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.* 8 C.F.R. § 204.5(h)(3)(iv)
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> *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)
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> *Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.* 8 C.F.R. § 204.5(h)(3)(vi)
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> *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)

The Petitioner claimed to have met another three criteria, which the Director did not grant:

> *Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.* 8 C.F.R. § 204.5(h)(3)(i)
>
> *Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.* 8 C.F.R. § 204.5(h)(3)(ii)
>
> *Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.* 8 C.F.R. § 204.5(h)(3)(iii)

On appeal, the Petitioner does not dispute the Director's findings regarding the three additional criteria.

After reviewing all of the evidence in the record, we will not disturb the Director's findings regarding the Petitioner's participation as a judge of the work of others, and his authorship of scholarly articles in the field. We will withdraw the Director's findings that the Petitioner has made original contributions of major significance and has performed in a leading or critical role for organizations or establishments with a distinguished reputation.

> *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 this criterion, petitioners must establish that not only have they made original contributions, but also that those contributions have been of major significance in the field. 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. The phrase "major significance" is not superfluous and, thus, it has some meaning. *See Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F. 3d 28, 31 (3rd Cir. 1995) quoted in *APWU v. Potter*, 343 F.3d 619, 626 (2nd Cir. Sep 15, 2003).

The Petitioner described his most significant findings in the field of plant pathology, concerning the effects of [redacted], commercially sold under the name [redacted]:

> He is credited with some of the most major (first in the world) discoveries in this field, such as his discovery that two different plant viruses, [redacted] and [redacted], work together to cause . . . much more damage than either disease could result in on its own. He was the first person in the world to elucidate that [redacted] a chemical [redacted] of plant defense, also [redacted] defense against tospoviruses such as [redacted] and [redacted]. Additionally, he was the first to uncover the

mechanism by which [redacted] genes are downregulated by [redacted] treatment, thus reducing viral symptoms.

The Petitioner also stated:

> He was the first one to demonstrate the [redacted] mechanism of extracellular [redacted] and showed a connection between damage signals [redacted] and major defense hormones in plants. In addition, he showed that the [redacted] induced defense targets major plant pathogens such as bacteria and fungi.

The Petitioner asserted that his "research has literally saved farmers millions of dollars in lost crops," and has "had a noticeable effect on the onion production in some areas." However, the Petitioner did not submit documentary evidence of this effect, nor does the Petitioner explain how he has verifiable knowledge of this effect in the absence of such evidence. Letters in the record attest only to the *potential* impact of the Petitioner's work, and do not support the claim that the Petitioner's "research has literally saved farmers millions of dollars in lost crops."

Furthermore, whatever the commercial impact of [redacted] the record shows that the product was already used on onion crops before the Petitioner published his findings. The Petitioner's inquiry into [redacted]'s mechanism of action adds to the general body of knowledge, but the Petitioner has not shown that this inquiry, rather than the use of [redacted] in general, has had major significance in agriculture (for example, by significantly changing the way onion farmers use [redacted]). The record does not appear to contain any first-hand documentation from onion growers or any representative body thereof.

The Petitioner submitted several reference letters from mentors, colleagues, and others, attesting to the scientific significance of his work. For example, a professor at [redacted] University contended that the Petitioner's "research has nationwide impact" because he "has provided a novel approach that can reduce crop loss due to pathogen attacks." A technical manager at [redacted] Crop Production, which manufactures [redacted] states that the Petitioner and his collaborators made "a critical research finding as it was the first report of molecular functioning of any plant [redacted] and provided a scientific evidence of mechanism of [redacted] in Plants."

The Director acknowledged the submitted letters, but found that "the submission of solicited letters supporting the petition is not presumptive evidence of eligibility." The Director cited case law indicating that U.S. Citizenship and Immigration Services (USCIS) may, in its discretion, consider advisory opinions as expert testimony, but that USCIS is ultimately responsible for making the final determination regarding eligibility. *Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r. 1988).

The Petitioner argues that the Director's "failure to consider expert testimony constitutes a violation of due process." The Director, however, did not fail to consider the submitted letters. The Director did consider them, and some of the Director's favorable findings (regarding, for instance, the significance of the Petitioner's contributions) relied significantly on those letters.

The Director granted some weight to the letters, but found them insufficient to establish eligibility. "Expert testimony" does not intrinsically compel approval of the petition. Letters of this kind can help to

explain the nature of the Petitioner's contributions, but should be supported with corroborating documentary evidence to establish the major significance of those contributions. The record does not show that the writers' views represent the consensus within that field. Rather, the writers represent individuals whom the Petitioner selected, and who accepted the Petitioner's solicitation to provide letters.

Beyond the letters discussed above, the Petitioner asserts that the citation of his published work demonstrates its impact on the field. At the time of filing, the Petitioner had published 12 scholarly articles, which had accumulated a total of 70 citations. One article amassed 38 citations over eight years; all the others had 10 or fewer. The Petitioner asserts that his citation total is "about 2.27 times the average number of citations" for plant science publications in the same date range. However, we note that evidence that summarizes citations to the Petitioner's entire body of published work, and claims that his overall citation rate is high, do not demonstrate that any specific contribution of his is so widely cited and relied upon that it is considered to have made a major impact in his field. Comparison of the Petitioner's cumulative citations to others in the field is often more appropriate in determining whether the record shows sustained national or international acclaim and demonstrates that he is among the small percentage at the very top of the field of endeavor in a final merits determination. Further, an above-average citation rate does not intrinsically indicate major significance in the field. The Petitioner did not show that the citations to his publications regarding a particular contribution demonstrate a level of impact commensurate with major significance.

The Petitioner's work clearly has shed light on issues of interest in plant pathology, but the record lacks sufficient objective evidence to show that the Petitioner has made contributions of major significance in his 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)

A USCIS policy memorandum includes the following guidance:

> If 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.
>
> If a critical role, the evidence must establish that the alien has contributed in a way that is of significant importance to the outcome of the organization or establishment's activities. A supporting role may be considered "critical" if the alien's performance in the role is (or was) important in that way. It is not the title of the alien's role, but rather the alien's performance in the role that determines whether the role is (or was) critical.
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> . . . .
>
> [T]he relative size or longevity of an organization or establishment is not in and of itself a determining factor. Rather, the organization or establishment must be recognized as having a distinguished reputation. Webster's online dictionary defines *distinguished* as 1: *marked by eminence, distinction, or excellence* . . . and 2: *befitting an eminent person*.

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*, 10-11 (Dec. 22, 2010), http://www.uscis.gov/legal-resources/policy-memoranda.

The Petitioner states that he "has been a major player at every institution he has worked at. He has made major discoveries which brought prestige to his universities, and perhaps even more importantly, his data was used to secure major grants for millions of dollars."

The Petitioner arguably performed in critical roles in some of the individual laboratories where he has studied and trained, but the Petitioner has not established that those laboratories are organizations or establishments with distinguished reputations in their own right, or that the Petitioner's role was critical not only to the laboratories, but to each university as a whole.

The Petitioner asserts that it is "false" to contend "that the petitioner must show that his work has benefited the establishment as a whole, as opposed to a department or laboratory within the organization." The regulation, however, requires "a leading or critical role *for* organizations or establishments that have a distinguished reputation"; the Petitioner seeks to substitute a much lower standard, regarding a leading or critical role for subdivisions *within* such organizations.

Furthermore, not every university has a distinguished reputation. The term "distinguished" necessarily implies a comparison, and no institution is distinguished simply by virtue of what type of institution it is. The Petitioner did not objectively demonstrate that [redacted] and [redacted], or the individual laboratories where the Petitioner studied and trained, have distinguished reputations.

The professor who supervises the Petitioner at [redacted] states: "For Biology and Biochemistry, the [redacted] is currently ranked at #11 in the World by the US News ranking." The Petitioner has not established that the laboratory where he works has a distinguished reputation on its own, or that he has played a leading or critical role for [redacted]'s Biology Department as a whole.

Regarding the Petitioner's emphasis on grant funding, academic research often relies on such funding, but it does not follow that every graduate student or postdoctoral research associate who participates in grant-funded research is, therefore, playing a critical role for the institution receiving that funding. Furthermore, the Petitioner provided no evidence to show how his fund-generating activities compare with those of others at the same institutions. Grant application documents in the record do not show that the approvals or amounts were contingent on the Petitioner's involvement. An application filed by [redacted] in 2015 does not list the Petitioner among the personnel who would participate in the funded research.

For the above reasons, we find that the Petitioner has not established that he has performed in a leading or critical role for organizations or establishments with a distinguished reputation.
Because the Petitioner has not demonstrated that he satisfies at least three of the ten regulatory criteria, we need not evaluate the totality of the evidence in the context of a final merits determination.

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. Some of the Petitioner's activities, such as writing and peer-reviewing scholarly articles, satisfy the letter of the criteria but do not distinguish the Petitioner from a great many others in his field.

The Petitioner has not demonstrated his eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.