U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 8468967

Date: JUNE 9, 2020

Appeal of Nebraska Service Center Decision

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

The Petitioner, a pharmacology 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 an individual in the 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,
>
> (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 their 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 currently an associate professor at [redacted] University in [redacted] Malaysia, conducting research that "addresses drug interactions involving natural products from marine and plant substances on diabetes and diabetes complications (wound healing and bone fragility)." The Petitioner is also a consultant for manufacturers of plant-based supplements.

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 Petitioner claims to have met six criteria, summarized below:

- (i), Lesser nationally or internationally recognized prizes or awards;
- (ii), Membership in associations that require outstanding achievements;
- (iv), Participation as a judge of the work of others;
- (v), Original contributions of major significance;
- (vi), Authorship of scholarly articles; and
- (viii), Leading or critical role for distinguished organizations or establishments.

The Director found that the Petitioner met the three evidentiary criteria numbered (ii), (iv), and (vi), and proceeded to a final merits determination. On appeal, the Petitioner asserts that he also meets the other three claimed evidentiary criteria.

After reviewing all of the evidence in the record, we find that the Petitioner meets only two criteria: (iv), pertaining to judging the work of others, and (vi), pertaining to authorship of scholarly articles. Below, we explain why the Petitioner has not met the other four claimed initial criteria.

> *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)

The Petitioner claimed six qualifying prizes and awards, but did not establish that they meet all the requirements spelled out in the regulation. An entry in a [redacted] *Who's Who* directory is not a prize or award; a "Long Service Award" from the Petitioner's employer recognized the length of his employment and "excellent performance" in his job, rather than excellence in his field. The latter prize is also limited to employees of one university, rather than field-wide. The Petitioner also received a government scholarship, not as a prize for excellence in his field but to help fund his then-ongoing graduate studies in preparation for future employment for which he was not yet fully qualified and credentialed.

Nigeria's High Commission in Malaysia (serving the same basic purpose as an embassy) gave the Petitioner a [redacted] Award," but the record does not say why, and therefore the Petitioner has not shown that this is an award for excellence in his field.

The two remaining prizes relate directly to the Petitioner's work; he won (or shared) third prize for presentations at two scientific conferences. But the Petitioner has not shown these prizes to be nationally or internationally recognized. Information about the reputations of the awarding entities does not establish or imply recognition of the prizes.

The Petitioner has not established his receipt of lesser nationally or internationally recognized prizes or awards for excellence in his field of endeavor.

> *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)

The Director found, without comment, that the Petitioner satisfies this criterion. We disagree.

The Petitioner asserts membership in five associations. He has not shown that any of these associations meet the regulatory requirements at his membership level. For two associations, the [redacted] Institute for Education and Research and the Malaysian Society of Pharmacology and Physiology, the Petitioner has not submitted the membership requirements. His documentation consists of a membership certificate for the former, and a "membership application/renewal" form for the latter.

Membership in the Malaysian Natural Products Society is "open to persons interested in the scientific study of the natural products of the flora and fauna of Malaysia and the surrounding region." Although the record shows the Society has a higher class of membership, honorary membership, which is limited to persons who "have rendered valuable service to the Society; or . . . have made an outstanding

contribution to the study of natural products," the record does not show that the Petitioner is an honorary member.

The record shows the British Pharmacological Society has several membership tiers. The "Honorary Fellow" level is reserved for individuals "distinguished for their sustained leadership role in science," but the Petitioner does not show that he is an honorary fellow. Other membership levels extend down to undergraduate students. Full membership "generally" requires a Ph.D., publication "in peer-reviewed journals," and similar academic activities. The Petitioner serves on the Society's Diploma Subcommittee, but he does not document his membership category. A letter from the Society refers to him simply as "a member." The Society's rules do not limit subcommittee membership to honorary fellows. Therefore, he has not shown that this membership meets the regulatory requirements.

Finally, the Petitioner is a "regular member" of the American Society for Pharmacology and Experimental Therapeutics (ASPET). Under ASPET's bylaws, regular membership is open to "[a]ny qualified investigator who has conducted and published a meritorious original investigation in pharmacology." "Meritorious" is not synonymous with "outstanding"; the former connotes a lower level of praise than the latter. *Meritorious* means "deserving of honor or esteem,"[1] whereas *outstanding* means "marked by eminence and distinction."[2] Also, there is no indication that recognized national or international experts judge the achievements of prospective members.

The Petitioner has not established that any of his memberships require outstanding achievement as judged by recognized national or international experts.

> *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 asserts that the citations to his published articles establish their significance. At the time of filing, the Petitioner's most-cited paper had accumulated 22 citations over the course of eight years. The Petitioner does not establish that only papers of major significance attain this level of citation.

A Malaysian government publication lists two of the Petitioner's inventions as having the "Potential to be Commercialised." One of these inventions, a powder containing the plant extract [redacted] is the subject of a patent application that the Petitioner filed in Malaysia in 2017. The record does not show that the products are actually on the market, or that the patent application has been approved. Even then,

[1] https://www.merriam-webster.com/dictionary/meritorious (last visited May 20, 2020).
[2] https://www.merriam-webster.com/dictionary/outstanding (last visited May 20, 2020).

not every patented and commercialized product has major significance. The approval of a patent recognizes originality rather than major significance.

The Petitioner provided his "research expertise and consultancy services" to an herbal supplement company, leading to the release of a [redacted] supplement. The Petitioner's research also appeared in a poster presentation at a scientific conference. The use of the Petitioner's research in these ways is not a self-evident demonstration of its major significance; not every commercial product, published article, and conference presentation has major significance in the field. The Petitioner indicates that 9,000 bottles of the supplement were sold nationwide. However, the Petitioner does not establish that this sales figure is significant; show how it compares with other supplement sales; or demonstrate that the supplement has had an appreciable impact on the health issues that the supplement is intended to address.

The Petitioner's research collaborators indicate that the research results are still tentative; one individual states: "So far the animal studies look promising and if human studies confirm the observed trends then [redacted] can be given as a supplement to negate the negative effects of long term usage of anti-diabetic drugs." The record does not indicate that the Petitioner's research has already had an impact at a level commensurate with major significance.

The Petitioner has not satisfied this criterion.

> *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 record establishes that [redacted] University has a distinguished reputation, but not that the Petitioner has performed in a leading or critical role for the University. He has served on various committees, worked on strategic initiatives, and helped to organize conferences, but the Petitioner has not shown that these activities were leading or critical with respect to the University as a whole, or that the affected departments and other subdivisions of the University have distinguished reputations in their own right.

B. Final Merits Determination

When a petitioner submits the requisite initial evidence, we evaluate whether the petitioner has demonstrated, by a preponderance of the evidence, sustained national or international acclaim, that the petitioner is one of the small percentage at the very top of the field of endeavor, and that the petitioner's 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.[3]

[3] 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/legal-resources/policy-memoranda (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).

In this instance, we find that the Petitioner has satisfied only two of the initial evidentiary criteria, and therefore the record does not warrant a full final merits determination. Nevertheless, we will briefly address the Director's findings in that regard because they factored into the denial of the petition.

Apart from the shortcomings already discussed above, the Director found that, while the Petitioner met the wording of criteria (ii), (iv), and (vi), the evidence submitted under those criteria does not establish sustained national or international acclaim or place the Petitioner at the very top of his field. For instance, the Director acknowledged that participation in peer review amounts to participation as a judge of the work of others under 8 C.F.R. § 204.5(h)(3)(iv), but peer review is routine in academia, rather than a privilege reserved for acclaimed experts at the top of the field.

On appeal, the Petitioner states that the Director "failed to elaborate specific reasons as to why [the Petitioner's] achievements were not indicative of someone who has risen to the top of the scientific field of Pharmacology." The burden of proof, however, is on the Petitioner. The Petitioner does not explain in any detail how the record, viewed as a whole, establishes eligibility; he merely asserts that this is the case.

The Director explained why the Petitioner's evidence was deficient, stating, for example, that the Petitioner did not show that his award from the Nigeria High Commission relates to his work in the field, or that his citation history is indicative of major significance in the field. Rather than address these deficiencies, the Petitioner asserts that the Director evaluated the record in a "piecemeal" fashion, rather than as a whole as *Kazarian* requires. The Director's decision does generally discuss the submitted evidence in the context of the regulatory criteria, but the Petitioner has not shown that this same evidence, considered together, would have established eligibility.

The Petitioner has established that he is an actively contributing member of the scientific community, both as a researcher and as a university faculty member. But success and productivity are not the same as acclaim, and the record does not establish that the Petitioner's work, and its impact on the field, indicate extraordinary ability that separates the Petitioner from the great majority of professionals in his field.

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. U.S. Citizenship and Immigration Services (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 his work has resulted in 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 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.

ORDER: The appeal is dismissed.