U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 7743609

Date: MAR. 5, 2020

Appeal of Nebraska Service Center Decision

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

The Petitioner, a researcher in epigenetics and oncology, 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 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,
>
> (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 completed his graduate studies at the [redacted] Institutes for Biological Sciences. He is now a postdoctoral fellow at the [redacted] Clinic's [redacted] Research Institute, "conducting research to discover novel [redacted] cancer treatments and address fundamental questions concerning [redacted] metabolism in [redacted] cancer."

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 three criteria, summarized below:

- (iv), Participation as a judge of the work of others;
- (v), Original contributions of major significance; and
- (vi), Authorship of scholarly articles.

The Director found that the Petitioner meets all three claimed criteria. The Petitioner's involvement in peer review constitutes participation as a judge of the work of others in the same or allied field under 8 C.F.R. § 204.5(h)(3)(iv). The Petitioner has written several scholarly articles in the field in professional or major trade publications under 8 C.F.R. § 204.5(h)(3)(vi).

The Director also granted the Petitioner's claim to have made original scientific contributions of major significance in the field under 8 C.F.R. § 204.5(h)(3)(v). The Petitioner asserted that his "major contribution is [his] discovery of [redacted] . . . and [his] being the first to uncover the role of [redacted] in cancer."

To explain the nature and significance of the Petitioner's work, a professor at [redacted] Medical School states: "Epigenetics . . . studies heritable changes that do not involve changes in DNA sequence . . . . One of these biochemical changes, [redacted] was long considered a permanent modification . . . [but can] be reversed by specific enzymes."

A professor at the University of [redacted] Medical School states:

> [The Petitioner] determined that the gene [redacted] can regulate other genes by modifying particular proteins that bind DNA called [redacted] Besides that, the gene was abnormally abundant in [redacted] cancer, and could sensitize [redacted] cancer cells which are otherwise resistant to [redacted] therapy . . . . This discovery added significantly to our understanding of how organisms control their own genes to guide normal development and physiology.

The Petitioner asserted that "[m]any national and international pharmaceutical companies have started developing new anti-cancer treatments based specifically on [the Petitioner's] research." At the time of filing, the Petitioner had published 11 journal articles. Most of those articles have been cited by other scientists. Two of the Petitioner's articles, published in 2007, accumulated most of those citations. Extensive citation of published work can be a hallmark of major significance in the field.[1]

Although the Director concluded that the Petitioner had established the major significance of his scientific contributions, as with all the regulatory criteria, satisfaction of this criterion does not establish eligibility or create a presumption of sustained acclaim.

Because the Petitioner met three of the regulatory criteria, the Director proceeded to a final merits determination.

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, 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

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

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 met this very high standard.

In denying the petition, the Director determined that the Petitioner has had a productive and successful career, but has not shown that he has risen to the very top of the field and earned sustained national or international acclaim. The Director noted that some of the Petitioner's activities satisfy the wording of individual regulatory criteria but, when viewed in the context of the record as a whole, do not establish eligibility.

For example, the Director found that the Petitioner's involvement in peer review amounts to judging the work of others, but concluded that such work does not require, reflect, or result in sustained acclaim, and is not reserved for the small percentage at the very top of the field. The Petitioner did not establish the various journals' requirements for peer reviewers, and the Director stated: "Evidence of the petitioner's participation as a judge must be evaluated in terms of these requirements." Peer review for journals that select peer reviewers based on subject matter expertise does not provide strong support for the petition, because expertise is a considerably lower threshold than acclaim.

Likewise, practical applications are not the same as acclaim; therefore, evidence that "[g]iant biopharmaceutical companies . . . are developing[redacted]' is not presumptive evidence of eligibility for the highly restrictive classification that the Petitioner seeks. This is particularly true given the Petitioner's stipulation that "four different groups" independently made the same discovery regarding the[redacted] gene in 2007, and therefore it is less evident that the Petitioner's work, in particular, is responsible for these developments. Also, the Petitioner does not establish that it is comparatively rare for pharmaceutical companies to take note of epigenetic research, such that their interest in the Petitioner's work is a hallmark of acclaim.

The Director pursued other lines of evidence in the denial notice, including grant funding and invitations for the Petitioner to participate in scientific conferences.[3] On appeal, the Petitioner does not address the Director's conclusions in these areas, focusing instead on citations of his published work.

At the time of filing, two of the Petitioner's papers from 2007 had accumulated more than 200 citations each. The Petitioner has placed significant emphasis on this fact throughout the proceeding. On appeal, relying on data from a 2016 article in *Science*, the Petitioner states that "only 5% of senior

[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).

[3] One organization invited the Petitioner to give a speech at a "Conference on Neurology and Neuromuscular Disorders," although the Petitioner claims no experience or expertise in those fields. This discrepancy raises unanswered questions about how the organization selects invitees.

scientists [with more than 20 years of experience] gained more than 200 citations from a single article and only 5% of researchers are senior scientists. So, less than 0.2% of all researchers reached this citation rate."[4] This argument relies on unproven assumptions. The Petitioner assumes that *only* "senior researchers" have high citation rates, and that "senior scientists" represent the *top* scientists, rather than the most *experienced* scientists. (The Petitioner's own history contradicts the first assumption, as he had less than 20 years of experience at the time of filing.)

The statute demands "extensive documentation" of recognition. Section 203(b)(1)(A)(i) of the Act. The Director took the Petitioner's citation record into consideration, but the Petitioner cannot rely on that record (and the *Science* article) to mathematically place himself at the top of the field without other persuasive evidence of sustained acclaim.

Furthermore, while the Petitioner has written some highly-cited articles, he hasn't shown a *consistently* high citation record indicative of sustained acclaim and recognition that has continued through his career. He was a graduate student when his most-cited articles appeared, 12 years before he filed the petition.

The aforementioned professor at [redacted] Medical School calls the Petitioner "one of the pioneers and explorers in this area," and asserts that the Petitioner's "work contributes to the foundation of the field of epigenetics and is a must-read for every scientist who wishes to pursue studies of epigenetic and genetic regulation." The Petitioner contends that the Director "arbitrarily excluded" this letter from consideration.

The Director did not specifically mention and quote from this one letter in the decision, but this does not necessarily mean that the Director ignored it or refused to consider it. Letters of this kind lend support to the Director's finding that the Petitioner has made original contributions of major significance. Nevertheless, the weight of such letters is limited.

The letter's reference to the Petitioner as "one of the pioneers and explorers" indicates that the Petitioner seeks and finds new knowledge in his field, which the Director did not dispute. The Director also acknowledged the significance of the Petitioner's scientific contributions. The remaining issue is whether the Petitioner has earned sustained national or international acclaim as a researcher at the very top of the field of epigenetics, and on this point the letter does not suffice to establish eligibility. The statute requires "extensive documentation," which the Petitioner has not provided in this proceeding.

The Petitioner states the impact of his research "can be proven" by a review article in *Cell Research* which mentioned two of the Petitioner's articles. The Petitioner protests that the Director "did not consider this as evidence of national and international acclaim, nor as a 'singled out' citation." The article in question cited 14 sources, describing each in technical detail. Regarding one of the Petitioner's articles, the review article states:

> K9me2[redacted] in the promoter region of the human rDNA gene that results in rRNA transcription requires[redacted] H3K9me2 occupancy on rDNA gene by ChIP

[4] The Petitioner does not explain the "less than 0.2%" figure; 5% of 5% is 0.25%.

> assay in control cells displayed two peaks, while H3K9me2 occupancy was stronger but more diffuse in [redacted] knockdown cells. Thus, these data suggest that [redacted] functions as part of a multienzyme complex upstream of rDNA genes.

The Petitioner maintains that this citation, and others in the record, show that his work was singled out for special attention, but he has not established how mentions of this kind translate into sustained national or international acclaim. The review article discusses the other source articles in similar terms; there is no special emphasis on the Petitioner's work. The article does not indicate that the cited articles were chosen based on their importance or prominence. The purpose of the article appears to be simply to explain the current state of knowledge regarding a very specific area of inquiry. (The title of the article is '[redacted]

The Petitioner asserts that it is the nature of scientific publications to cite and briefly describe source articles, and the record amply bears out this assertion. By way of analogy, the Petitioner cites the discovery that "the bacteria *Helicobacter Pylori* is the pathogen [that causes] chronic gastritis and gastric ulcers." The Petitioner states that this Nobel Prize-winning discovery has "become common sense in the field," but references to it in the scientific literature might be "concentrated into one sentence." The Petitioner acknowledges that his own findings have had less impact, but contends that his "case is in a similar situation," because his "findings . . . contribute as [*sic*] fundamental knowledge of epigenetics and are broadly acknowledged and implemented." The Petitioner's analogy does not succeed, because, from the evidence presented, virtually all citations take the form described, whether describing passing observations or Nobel Prize-caliber discoveries.

The Petitioner's arguments on appeal focus his original contributions of major significance, and we do not question that conclusion here; however, the issue is whether recognition of the Petitioner's contributions has risen to the level of sustained national or international acclaim that has elevated the Petitioner to the very top of his field.[5] The Petitioner has shown that his work, particularly the research he published in 2007, is important, but not that it has earned him sustained acclaim. Also, patent applications and other materials show that other researchers have relied on the Petitioner's work, but such reliance is not intrinsically indicative of acclaim at the very top of the field. The Petitioner's work is clearly important and has practical applications, but the Petitioner has not shown that it is rare for scientific research to be put to use in these ways.

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 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 ongoing 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 that he

[5] The Petitioner refers to research into [redacted] as a "field," but this area of research appears to be much too narrow and specialized to constitute a field in its own right.

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). The Petitioner produced some high-impact work during his graduate studies, but while his subsequent work has also been productive, the record does not indicate a degree of recognition consistent with the sustained acclaim that the statute demands. We find the record insufficient to demonstrate that he has sustained national or international acclaim and is among the small percentage at the top of his field. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2).

III. CONCLUSION

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.

ORDER: The appeal is dismissed.