U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 8099829

Date: MAY 27, 2020

Appeal of Nebraska Service Center Decision

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

The Petitioner, an orthodontist, researcher and educator, 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 meets the initial evidence requirements, it did not establish that she has the requisite sustained national or international acclaim in her field and is among the small percentage at the very top of her field.

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). The regulation at 8 C.F.R. § 204.5(h)(4) allows a petitioner to submit comparable material if he or she is able to demonstrate that the standards at 8 C.F.R. § 204.5(h)(3)(i)-(x) do not readily apply to the individual's occupation.

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 completed her initial training in orthodontics in India, and continued her training in the United States at the [redacted] University, becoming certified by the American Board of Orthodontics in 2014. At the time of filing she was employed as an assistant professor at [redacted] University.

A. Evidentiary Criteria

Because the Petitioner has not indicated or established that she has received a major, internationally recognized award, she 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 the requisite three of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), those relating to her participation as a judge of the work of others, original contributions of major significance to the field, and authorship of scholarly articles published in professional journals. Upon review, we agree that the record supports the Petitioner's qualification under two of those criteria. Specifically, she has submitted evidence that she has co-authored eight papers or book chapters which have been published in professional medical journals or books, and that she has served as a peer reviewer on more than twenty occasions for several scientific journals. However, we do not agree with the Director's determination regarding her original contributions of major significance in her field under the criterion at 8 C.F.R. § 204.5(h)(3)(v).

On appeal, the Petitioner initially stresses that two articles she published in scientific journals rank among the top 10% most cited articles published in the area of clinical medicine in their respective years, based upon statistics appearing in a report from Clarivate Analytics[1]. We note, however, that the area of clinical medicine is significantly broader than the Petitioner's field of orthodontics, including those who conduct clinical research in many other medical specialties. As the record includes evidence indicating that citation figures such as these are field-specific, the fact that two of the Petitioner's papers were cited by others in their own published work at a higher rate when compared to all researchers in the area of clinical medicine does not necessarily establish that this research has been of major significance in the field.

[1] All citation figures and relating statistics reflect data available at the time of filing.

To support her assertion of the value of these statistics, the Petitioner submitted a paper published in the journal *Scientometrics* which suggests that the authorship of papers shown to be in the top 10% in terms of citations are one of three factors that should be given "the highest weight when comparing the scientific performance of single researchers." However, this evidence does not establish that metrics that may be suitable for comparing applicants for academic research positions and grants are useful as indicators that a researcher has made contributions of major significance.

In addition, the Petitioner refers to the total number of citations to her published work as compared to other researchers in her field, and points to data from Microsoft Academic to support her assertion. We first note that the number of total citations is one measure which may be appropriate in evaluating sustained acclaim or standing in the field under a final merits determination, as the Petitioner does on appeal, but it does not serve as an accurate gauge of the significance of a specific contribution the Petitioner has made to the field. In addition, we note that this data, which indicates that in the period from 2010 to 2019, the Petitioner ranked in the top 2% in terms of the total number of citations to her work compared to others in the fields of orthodontics, dentistry and dental surgery, excludes from consideration research which was published prior to 2010, and thus does not account for the research of those who have been working in the field of orthodontics prior to 2010 and who remain active.

More importantly, the Petitioner has not established that the research in the two papers noted above, or the other papers she has co-authored, has had a significant impact on the work of others in her field. The most recently published and highly cited paper of the two referenced above appeared in the *American Journal of Orthodontics and Dentofacial Orthopedics* (AJODO) in 2014, and reported the results of a survey conducted by the Petitioner and her colleagues regarding patients' and orthodontists' perceptions of the value of a reduction in the treatment time for orthodontic procedures. Aside from the citation figures and statistics, the Petitioner also submitted evidence in the form of reference letters and citing articles to establish the impact of this research on the field of orthodontics.[2] One such letter was written by [redacted] of the University [redacted], who indicates that the Petitioner's findings regarding patients' willingness to accept and pay for newer orthodontic procedures "is of tremendous value to third party companies who rely on this type of data when developing and marketing new clinical procedures." He adds that "unsurprisingly, [the Petitioner] determined that all groups displayed greater interest in non-invasive procedures as opposed to invasive procedures," and that the "frequent citation of [the Petitioner's] survey research is to be expected given the general interest by patients, providers and referring dentists in reducing orthodontic treatment time."

Another reference letter which focuses on this specific work came from [redacted] of the University of [redacted]. He indicates that he conducted a study of an orthodontic device because he had found a discrepancy regarding its performance in reports, and because the Petitioner's study showing patients' desire for accelerated treatments drove his concern about claims made regarding the device. The Petitioner also included a copy of [redacted]'s paper which cited her research results, in which he and his co-authors indicate that her finding that patients desire accelerated treatments were "not surprising."

[2] All of the reference letters in the record have been thoroughly reviewed, including those not specifically mentioned in this decision.

A third letter discussing the impact of the Petitioner's research in patients' and orthodontists' treatment expectations was written by [redacted] Professor of Orthodontics at [redacted] He states that awareness of patient and practitioner views on treatment options "is paramount to providing informed patient care, so any study that can clarify these preferences is of immense value to the field." He then writes that he has used the Petitioner's research "as a platform to further my own clinical studies," and refers to a paper he published in AJODO four years after the Petitioner's paper was published which evaluated the efficacy of vibrational force treatments to accelerate space closure. A partial copy of this paper was submitted in the record which shows that after citing the Petitioner's paper in the introduction for its finding that patients prefer non-invasive treatments, [redacted] and his colleagues focused on examining whether a particular dental appliance provided treatment benefits. Although these letters and papers indicate that the Petitioner's survey paper disseminated useful data which was utilized by several other researchers to support their research goals, they do not establish that it had an impact of major significance by advancing the field of orthodontics.

As an additional contribution of major significance, the Petitioner repeats on appeal her assertion that clinical trials have proceeded on the basis of her work. In support of this assertion, the Petitioner submitted evidence in her response to the Director's RFE from the website https://clinicaltrials.gov, and highlighted citations to published research contained in reports on four clinical trials. Those research papers, also included in the record, each contain a citation to the Petitioner's survey paper described above, either in the introduction or conclusion of the papers. However, while each of these papers cite to information from the Petitioner's paper regarding the preferences of orthodontists and their patients, none of them build or expand upon these statements, instead focusing on the efficacy of certain treatments. In addition to the example of [redacted]s research discussed above, other papers reporting clinical trials of orthodontic treatments in the record included a citation of the Petitioner's research towards the end of the paper to reflect that the treatment studied met the surveyed orthodontists' expectations. This evidence shows that after researching the efficacy of treatments, the researchers used the Petitioner's data to evaluate the likelihood of a certain treatment being considered worthwhile by orthodontists and patients, but it does not support the Petitioner's assertion that her research formed the basis for these clinical trials.

The Petitioner further asserted in her response to the Director's RFE that her work had led other researchers to develop guidelines for orthodontic treatment. She points to a reference letter from [redacted] of the University [redacted] who discusses her research on alveolar ridge manipulation procedures. He notes that the Petitioner and her colleagues used two different methods to evaluate the outcome of this procedure, which ultimately demonstrated that is superfluous. [redacted] indicates that he "directly drew on" these papers in developing a systematic review of orthodontic treatments, and states that he and his colleagues reached their conclusion "with the aid of [the Petitioner's] insights." He concludes that his review, and another conducted by a different group of researchers, "demonstrate the significant influence of [the Petitioner's] research on clinical practice." A partial copy of [redacted]' paper is included in the record, which serves to verify his citation of the Petitioner's papers among that of other researchers. However, while this evidence establishes that other researchers have built upon this aspect of the Petitioner's work, the record does not include evidence supporting her claims that her research has led others to develop guidelines that have been implemented or that the conclusions of researchers who built upon her work have been adopted by other orthodontists in their clinical work.

Upon review of the evidence submitted in support of the Petitioner's claim to have made original contributions of major significance in her field, we disagree with the Director and find that it does not support the conclusion that she meets this criterion. Accordingly, we withdraw that aspect of the Director's decision.

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.

Specifically, while the evidence establishes that she meets the criterion at 8 C.F.R. § 204.5(h)(3)(iv) for her work as a peer reviewer, it does not demonstrate that this activity places her in the small group at the top of her field or is indicative of acclaim at the national or international level. While she verified that she is (or was) an editorial board member for the *Journal of the World Federation of Orthodontists* (JWFO), which suggests she took on broader responsibilities including advising of the journal's policies, we note that the only evidence of her activity are five emails thanking her for her review of papers submitted for publication. In addition, the record does not include information about JWFO that would support the Petitioner's assertion that her selection and service as an editorial board member for the journal reflects her position at the top of the field. Further, our review of the significance of her contributions to the field considered the impact of her published research, and the evidence does not establish that the Petitioner's publication record otherwise brought her sustained acclaim or elevated standing in her field.

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 her 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 she 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. 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.