U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 8184678

Date: MAY 29, 2020

Appeal of Nebraska Service Center Decision

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

The Petitioner, a researcher in immunology and food allergy, 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 the Petitioner had satisfied only two of the initial evidentiary criteria, of which she must meet at least three.

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)(A) 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,
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> (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
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> (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).

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 indicated employment as a research scientist at the University of [redacted] in [redacted] Canada. 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).

In denying the petition, the Director determined that the Petitioner fulfilled two of the initial evidentiary criteria, judging at 8 C.F.R. § 204.5(h)(3)(iv) and scholarly articles at 8 C.F.R. § 204.5(h)(3)(vi). The record reflects that the Petitioner reviewed papers for journals. In addition, the Petitioner has authored scholarly articles in professional publications. Accordingly, we agree with the Director that the Petitioner fulfilled the judging and scholarly articles criteria.

On appeal, the Petitioner asserts that she meets an additional evidentiary criterion, discussed below. After reviewing all the evidence in the record, we conclude that the record does not support a finding that the Petitioner satisfies the requirements of at least three criteria.

> *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).

The Petitioner maintains that she has made several original contributions of major significance in her field as evidenced by her published research, citation record, and letters from experts in the field. In order to satisfy the regulation at 8 C.F.R. § 204.5(h)(3)(v), a petitioner must establish that not only has she made original contributions but that they have been of major significance in the field.[1] 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 in the field.

The Petitioner contends that the Director "evaluated her evidence in a manner that does not address the substance of the criterion." As it relates to the citation of her work, the Director indicated that "while your research demonstrates original contributions in the field, the number of citations of your work, when compared with that of the leading scientists in the field, whose publications (according to

[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* 8-9 (Dec. 22, 2010), https://www.uscis.gov/policymanual/HTML/PolicyManual.html (finding that although funded and published work may be "original," this fact alone is not sufficient to establish that the work is of major significance).

Google Scholar) have garnered citations numbered well into the thousands, does not demonstrate contributions of major significance in the field." In general, the 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 she is among the small percentage at the very top of the field of endeavor in a final merits determination, if the Director determined she met at least three of the regulatory criteria. *See Kazarian* 596 F.3d at 1115. However, the comparison of citations to a particular scientific article may be relevant for this criterion in order to establish the overall field's general view of a contribution of major significance.

In addition, the Petitioner maintains that she "has authored at least 36 scientific articles, and her articles had collectively garnered at least **954 citations** already at the time of the Denial . . . ."[2] She provided her publication and citation record from Google Scholar, statistical information regarding her number of publications and citations from Clarivate Analytics, and excerpts of other published articles that cite to her work.[3] The fact that the Petitioner has published articles that other researchers have referenced is not, by itself, indicative of a contribution of major significance. Publications are not sufficient under 8 C.F.R. § 204.5(h)(3)(v) absent evidence that they were of "major significance." We acknowledge, however, that a petitioner may present evidence that her articles "have provoked widespread commentary or received notice from others working in the field, or entries (particularly a goodly number) in a citation index which cite [her] work as authoritative in the field, may be probative of the significance of [her] contributions to the field of endeavor."[4]

The Petitioner also submitted evidence from Clarivate Analytics showing that some of the articles she published were ranked among the top 10% in citations when grouped by academic field (in this case, immunology) and year of publication. She further submitted a paper published in the journal *Scientometrics* which suggests that this metric is one of several that should be used to evaluate individual researchers "in the natural and life sciences" for purposes of funding and promotion or hiring decisions. The authors state that "publications which are among the 10% most cited publications in their subject area are as a rule called highly cited or excellent" and that "the top 10% based excellence indicator" 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 indicators that a researcher has made contributions of major significance to his or her field.

Comparative rankings to baseline or average citation rates do not automatically establish that a given petitioner has made a contribution of major significance in the field.[5] Highly-cited publications alone are not sufficient under 8 C.F.R. § 204.5(h)(3)(v) absent evidence that they were of "major significance" as a citation ranking does not provide sufficient context to determine the impact or

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[2] The Petitioner notes that the Director incorrectly stated that "the record shows 350 citations" to her work.

[3] The Petitioner also referenced unpublished AAO decisions that purportedly support her eligibility claims. As noted by the Director, while the regulation at 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding.

[4] *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8.

[5] For instance, according to the data from Clarivate Analytics, immunology papers published in 2017 receiving only seven citations are in the top 10%. The Petitioner has not demonstrated that papers with such citation counts have necessarily had a major, significant impact or influence in the field as evidenced by being among the top 10% of most highly cited articles according to year of publication.

importance of a given researcher's work in the field. That context must be provided by other evidence in the record. The Petitioner has not demonstrated, as she asserts, that any of the articles she characterizes as highly cited resulted in an original contribution of major significance in the field. While the Petitioner submitted corroborating evidence in the form of expert opinion letters, that evidence, for the reasons discussed below, is not sufficient to establish that any of the Petitioner's research findings have remarkably impacted or influenced her field.

Further, the record indicates that the Petitioner submitted examples of "notable citations" to her work by other researchers. A review of those articles, though, does not show the significance of the Petitioner's research or demonstrate how it has widely impacted the field. For instance, the Petitioner provided a partial article entitled, '[redacted] (*Clinical & Experimental Allergy*), in which the authors cited to her 2008 article published in *International Archives of Allergy and Immunology*.[6] However, the article does not distinguish or highlight the Petitioner's written work from the 119 other cited papers; rather, the authors cited her article and nine others in support of a statement that '[redacted]"

The Petitioner also argued that her work "has been published in some of the most prestigious high impact journals" in the field. However, the Petitioner has not demonstrated that publication of her articles in highly ranked journals establishes that the field considers her research to be an original contribution of major significance. Moreover, a publication that bears a high ranking or impact factor is reflective of the publication's overall citation rate. It does not show an author's influence or the impact of research on the field or that every article published in a highly ranked journal automatically indicates a contribution of major significance. Publications and presentations are not sufficient under 8 C.F.R. § 204.5(h)(3)(v) absent evidence that they were of "major significance." *See Kazarian v. USCIS,* 580 F.3d at 1036, *aff'd in part*, 596 F.3d at 1115. Here, the Petitioner has not established that publication in a popular or highly ranked journal alone demonstrates a contribution of major significance in the field.

Moreover, the Petitioner emphasized that her publications have been cited in several review articles and stated that the appearance of her articles in the review literature demonstrates the "impact and originality" of her work. The Petitioner further explains that review articles are "an attempt to . . . sum up the current state of the research on a particular topic" and may identify "the main people working in a field" and "recent major advances and discoveries." One of the submitted review articles, titled [redacted] (*Food Reviews International*) cites to two of the Petitioner's studies in this area (published in her 2009 and 2011 *Veterinary Immunology and Immunopathology* articles) as showing that [redacted] . . . [redacted]" but does not otherwise address the impact of this research or the importance of the Petitioner's findings in these studies, nor does it distinguish her papers from the other 131 papers cited. While the evidence indicates that the Petitioner has made original contributions in active scientific research in her field, we cannot

[6] Although we discuss a sample article, we have reviewed and considered each one.

determine that every publication cited in a review article is indicative of an original contribution of major significance.

Finally, the Petitioner provided evidence reflecting the originality of her research through recommendation letters praising her for her contributions.[7] In general, the letters recount the Petitioner's research and findings, indicate their publication in journals, and point to the citation of her work by others. Although they reflect the novelty of the projects on which she worked, they do not show how her research and findings have been considered of such importance and how their impact on the field rises to the level required by this criterion.

For instance, the Petitioner's doctoral advisor at University, indicates that one of the Petitioners projects in food allergy research was her investigation of immunotherapeutic strategies to alleviate allergies in mice, and that her research identified "several novel vaccine candidates." did not indicate, however, that vaccines or other new therapies to prevent or mitigate allergies have been designed or developed based on the Petitioner's research.

the Petitioner's post-doctoral research supervisor at the University of provides that the Petitioner's research group was the "first to focus on the for an investigation of food allergy using as a model." He indicates that the team provided a previously unavailable regeant to research groups, including at in , "to establish a response of to native and allergen-deleted soy," and that "top researchers from the United States, Canada, and Mexico" have implemented the group's work in their own studies. He further states that the Petitioner's research on the prevention of allergy through treatment of with received "significant media attention" through a article published in the Canadian better farming magazine *Pigs, Pork, and Progress.* The record contains a copy of the article and magazine cover, both of which feature a picture of the Petitioner and However, the Petitioner did not show that such limited media coverage indicates an original contribution of major significance in the field. For example, she did not demonstrate that her research and findings resulted in widespread coverage and interest.

indicates that the Petitioner's research team at the University of was able to "produce and purify antibodies against " which his laboratory used "to test and measure allergic reactions and insensitivities of to various components of soybean." He indicates that the work of the Petitioner's research team "opened the way to more scientific studies of food allergies in rather than in the use of rodent models." , the Petitioner's colleague at University, states that the Petitioner's use of probiotics in models to alleviate allergy warrants further investigation. He states that the Petitioner's work establishing the superiority of the model to the inbred rodent model as an analogue of allergies in humans "considerably changed the course of food allergy research." He does not elaborate as to why and how the Petitioner's work "considerably changed" research in the field.

The Petitioner also provided letters from several researchers who have cited to the Petitioner's research in their own work. For instance, emeritus professor of microbiology at the University states that his own research involving s in the study of virulence factors in animal

[7] Although we do not discuss every letter submitted, we have reviewed and considered each one.

health research reinforces the Petitioner's claim that the [redacted] is a more appropriate model for studying human immunology than the inbred mice model. He asserts that the Petitioner "has provided a wealth of data that identifies [redacted] animal model of choice when studying food allergies and preventative treatments and should be used moving forward.

Overall, the expert letters have not elaborated or discussed whether the Petitioner's findings have been implemented beyond informing the research of other scientists in the same field, and if so, the extent of their application. While the letters praise the Petitioner's research as original, valuable and promising, they have not sufficiently detailed in what ways her studies have already advanced the state of research in this field or elaborated on how the Petitioner's work has already impacted the wider field beyond the teams of researchers who have directly cited her articles. Letters that specifically articulate how a petitioner's contributions are of major significance to the field and its impact on subsequent work add value.[8] On the other hand, letters that lack specifics and use hyperbolic language do not add value, and are not considered to be probative evidence that may form the basis for meeting this criterion.[9] Moreover, USCIS need not accept primarily conclusory statements. *1756, Inc. v. The U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.C. Dist. 1990).

Considered together, the evidence consisting of the citations to the Petitioner's published findings, the citation statistics, and the reference letters from her colleagues and other experts, establishes that the Petitioner has been very productive, and that her published data and findings have been relied upon by others in their own research. It does not demonstrate that the Petitioner has made an original contribution of major significance in her field. Therefore, she has not met this criterion.

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. 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). Although the Petitioner has reviewed papers for journals and has authored scholarly articles, the

[8] *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8-9.

[9] *Id.* at 9. *See also Kazarian*, 580 F.3d at 1036, *aff'd in part*, 596 F.3d at 1115 (holding that letters that repeat the regulatory language but do not explain how an individual's contributions have already influenced the field are insufficient to establish original contributions of major significance in the field).

Petitioner has not established that her professional accomplishments have placed her among the upper level of her field.

For the reasons discussed above, the Petitioner has not demonstrated her 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.