U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 11040020

Date: NOV. 24, 2020

Appeal of Nebraska Service Center Decision

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

The Petitioner, an engineer and 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 the Petitioner did not: (1) specify the nature of his field; (2) submit extensive documentation of his achievements in that field; and (3) establish that his entry into the United States will substantially benefit prospectively the United States. 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 international 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 criteria 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).

II. ANALYSIS

A note on the petition form advised that submission of an incomplete form may result in denial of the petition. Nevertheless, the Petitioner left several parts of the form incomplete.[1] Asked if any immigrant visa petition had ever been filed on his behalf, the Petitioner answered "no." U.S. Citizenship and Immigration Services (USCIS) records, however, show that the Petitioner filed a petition on his own behalf, seeking the same immigrant classification, in December 2011. The Director of the Texas Service Center denied that petition in March 2013.

The record contains minimal evidence about the Petitioner's background and history. He holds bachelor's and master's degrees in pharmaceutical science. On the petition form, he stated his intended job title as "Chairman Board of Trustee, Researcher Engineering" (*sic*) and described his intended job as "manufact[u]ring patent [redacted] instruments, do research in [redacted] structure dete[r]mination." He listed the Standard Occupational Classification codes for materials scientists and electrical engineers.

The Petitioner's initial filing included minimal supporting documentation, including the following:

- A copy of a transcript from the Petitioner's graduate studies at the University [redacted] from 1993 to 1996;
- The first page of an undated "Letter to the Editor," unsigned but apparently written by the Petitioner, describing "the chemical structure of melanin." The document does not identify the publication to which it was submitted, nor does it show that the letter was published;
- A Certificate of Registration, indicating that the Petitioner holds the copyright for a book with the title [redacted]; and

[1] One unanswered question was whether the Petitioner is in removal proceedings. USCIS records show that protracted removal proceedings involving the Petitioner resulted in an order of removal.

- Documentation showing that the Petitioner had filed patent applications in 2009, 2011, and 2016. The Petitioner has not established, or claimed, that the patent applications were approved.

The Director denied the petition, stating that the Petitioner did not submit extensive documentation of recognition in the field, as the statute requires. The Director also noted that the Petitioner did not complete material portions of the petition form.

On appeal, the Petitioner asserts that the previously submitted materials "fully prove [the Petitioner] has extraordinary ability in sciences," because his book revealed a "new equation to calculate [redacted] number," and the equation's accuracy has been confirmed [redacted] The Petitioner contends that his "new equation has tremandace significances world widely [*sic*]," but the Petitioner's own opinion of the importance of his work is not sufficient to establish sustained national or international acclaim. The Petitioner indicates that he established the corporation that published his book; he cites no evidence of the book's distribution and influence on the field, and no evidence regarding the activity of his company.

The Petitioner cites his patent applications, stating that his "invention introduced significant advances in [redacted]' and related equipment. The Petitioner does not claim that the applications have been approved or the patents have been granted. The filing (or approval) of a patent application is not, by itself, evidence of eligibility for the highly restrictive immigrant classification that the Petitioner seeks. Patents and copyrights attest to originality rather than importance or impact.

The Petitioner asserts that his letter to the editor appeared in *Pigment Cell Research* in 2004, and "is one of the most important research paper[s] on melanin structure," and that his "new equation is at the top level in [redacted] research science." As before, the Petitioner does not establish who, other than himself, holds this opinion of his work.

Section 203(b)(1)(A)(i) of the Act requires the Petitioner to establish sustained national or international acclaim and extensive documentation showing that the Petitioner's achievements have been recognized in the field. The six pages of documentation the Petitioner submitted, relating to his work in the field, is not extensive, and it consists of his own work rather than evidence of the recognition and acclaim that the statute demands. The Petitioner claims to have made landmark advances to his field, but he has not shown that others in the field share this view. His opinion of the importance of his own work is not acclaim, and it does not show that he has risen to the very top of his field as required by 8 C.F.R. § 204.5(h)(2). The Petitioner has not submitted evidence to show that his writings and inventions have had a significant, measurable impact on his field, or on a national or international level.

Because the Petitioner has not met the threshold requirements regarding recognition in the field, we need not proceed to the separate issue of prospective benefit to the United States. Therefore, we reserve that issue.[2]

[2] *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

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; he has not presented any coherent claim in relation to the evidentiary requirements. 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 conclusion 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 recognized as being at the top of their respective fields. It cannot suffice simply to demonstrate that one has engaged in research and declare that this research amounts to a major advance in the field. Acclaim and recognition, by nature, come from others in the field, rather than from one's opinion of the value of one's own work. The Petitioner has not provided any indication of how others in his field (however that field is defined) have used or responded to his work. Furthermore, the small quantity of evidence submitted documents minimal activity over a span of more than a decade.

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.