U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 9868430

Date: SEPT. 24, 2020

Appeal of Nebraska Service Center Decision

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

The Petitioner seeks classification as an alien of extraordinary ability in molecular biology. *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 ten initial evidentiary criteria, of which he 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,
>
> (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 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

The Petitioner claims employment as a postdoctoral researcher with the [redacted] University [redacted] 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).

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, he 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 he meets an additional criterion, discussed below. After reviewing all of the evidence in the record, we conclude that the record does not support a determination 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 argues:

> [He] submitted preponderant evidence of his original scientific contributions, including media reports about his original research discoveries, the high reputation and quality of professional journals that include his original discoveries in the form of scholarly papers, the extensive citations in his specific field in a relatively short period of time to prove [his] original scientific contributions of major significance have been recognized in the scientific community.
>
> [He] submitted well-founded expert testimonies to prove the major significance of [his] original scientific contributions.

In order to satisfy the regulation at 8 C.F.R. § 204.5(h)(3)(v), a petitioner must establish that not only has he 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.

As it relates to his publication history, the Petitioner presented evidence reflecting that he authored five articles in professional journals, including *Cell Research* (2011), *Nature Neuroscience* (2013), *Journal of Comparative Neurology* (2013), *Cell Reports* (2016), and *Stem Cells* (2013). While he contends that he "published high-quality scientific papers in highly influential professional publications," the Petitioner did not demonstrate that publication of articles in highly ranked or prestigious journals automatically establishes original contributions of major significance. Moreover, a publication that bears a high ranking or impact factor reflects the publication's overall citation rate; it does not show that specific author's influence or the impact of research in 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 1030, 1036 (9th Cir. 2009), *aff'd in part*, 596 F.3d 1115. Here, the Petitioner did not establish that publication in a popular or highly ranked journal demonstrates a contribution of major significance in the field. For example, the Petitioner did not explain how an article published in a "high-impact" journal that resulted in receiving little or no attention or otherwise did not influence the field would routinely qualify as being majorly significant in the field.

Further, as pointed out by the Petitioner, the Director indicated that "the number of citations of [his] work, when compared with that of the leading scientists in the field, whose publications (according to Google Scholar) have garnered citations numbered well in the thousands, does not establish contributions of *major* significance in the field." (emphasis in original). 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 he is among the small percentage at the very top of the field of endeavor in a final merits determination if the Director determined he 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, as indicated below, may be relevant for this criterion in order to establish the overall field's general view of a contribution of major significance.[2]

Moreover, the Petitioner argues that "[t]he CIS/NSC Director abused discretion by arbitrarily ignoring the evidentiary value of [his] objective evidence of the top percentile comparison data of citations and metrics due to prove his original contributions of major significance." Specifically, the Petitioner refers to his citation numbers compiled by Google Scholar and percentage rankings from InCites

[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).

[2] *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8-9; *see also Visinscaia*, 4 F. Supp. 3d at 134-35 (upholding a finding that a ballroom dancer had not met this criterion because she did not corroborate her impact in the field as a whole).

Essential Science Indicators by Clarivate Analytics and Altmetric. The record reflects that the Petitioner initially submitted evidence from *Google Scholar* reflecting that his journal articles indicated above received 232, 138, 43, 13, and 11 citations, respectively. In response to the Director's request for evidence and on appeal, the Petitioner provided updated figures showing increased citations for each of his papers. However, the Petitioner did not show whether the increased citations occurred in papers published after the filing of his petition. *See* 8 C.F.R. § 103.2(b)(1). Regardless, this criterion requires the Petitioner to establish that he has made original contributions of "major significance" in the field. Thus, the burden is on the Petitioner to not only identify his original contributions but to also explain why they are of major significance in the field. Generally, citations can serve as an indication that the field has taken interest in a petitioner's research or written work. However, the Petitioner has not sufficiently demonstrated that the citations to his work are commensurate with contributions of major significance. Here, the Petitioner did not articulate the significance or relevance of these citation figures. For example, he did not demonstrate that 232 citations for his *Cell Research* article signifies an unusually high number in his field or how they compare to other articles that the field views as having been majorly significant.[3] Although his citations indicate the some in the field have referenced his work, the Petitioner did not establish that his citation numbers to his work satisfy the threshold of the regulatory requirement of "major significance."

As it pertains to InCites Essential Science Indicators from Clarivate Analytics, the Petitioner contends that his "scientific papers have been placed on the Top 1% and Top 10% of the most-cited papers repeatedly."[4] Moreover, regarding Altmetric, the Petitioner argues that his *Cell Research* "paper has been ranked within the top 5% of all research outputs scored by Altmetric based on Altmetric's highly-level measure of quality and quantity of online attention the paper has received."[5] Comparing average citations per paper per year to the Petitioner's citations, however, does not automatically establish majorly significant contributions in his field, nor did he show that all papers garnering citations above the average for the year qualify as being majorly significant. Once again, the issue for this criterion is whether the Petitioner has made original contributions of major significance in the field rather than where his citations fall among the averages of others in his field. Here, a more appropriate analysis, for example, would be to compare the Petitioner's citations to other similarly, highly cited articles that the field views as being majorly significant, as well as factoring in other corroborating evidence. The Petitioner has not demonstrated that papers with unreliable and skewed citation rankings and

[3] *See* USCIS Policy Memorandum PM 602-0005.1, *supra,* at 8-9 (providing an example that peer-reviewed articles in scholarly journals that 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 the individual's work as authoritative in the field, may be probative of the significance of the person's contributions to the field of endeavor).

[4] According to Clarivate Analytics, "[c]itation frequency is highly skewed, with many infrequently cited papers and relatively few highly cited papers. Consequently, citation rates should not be interpreted as representing the central tendency of the distribution." For instance, based on the Clarivate Analytics data submitted by the Petitioner, biology and biochemistry papers published in 2018 receiving nine and three citations are considered to be in the top 1% and 10%, respectively.

[5] According to Altmetric, "[i]t is important to bear in mind that metrics (including citation-based metrics) are merely indicators-they can point to interesting spikes in different types of attention, etc but are not themselves evidence of such." Moreover, "[t]here are a number of limitations to the use of altmetrics," "altmetrics are a complement to, not a replacement for, things like informed peer review and citation-based metrics," "[a]nyone with enough time on their hands can artificially inflate the altmetrics for their research," and "[u]ntil we know more, use and interpret altmetrics carefully."

percentiles provide probative evidence of being majorly significant in the field as indicated by being among the top percentile or most highly cited articles according to year of publication.

Similarly, the Petitioner contends that he provided:

> Evidence of the Top 6% most cited papers among all the scientific research papers in the same issue of the scientific journal *Cell Research* reported by Metrics of citations, as well as the Top 22% most cited papers among all the scientific research papers published in *Nature Neuroscience* Volume 21 issues 12-10 (the fourth season) in 2013 reported by Metrics of citations.

At the time of initial filing, the Petitioner submitted self-compiled tables entitled "Cell Research 2011 Volume 21 Ranked 5th out of 81, Top 6%" and "Nature Neuroscience 2011 Volume 21, Issue 12-10 (the fourth season) Ranked 11th out of 50, Top 22%." However, comparing a journal article to the other articles from the same journal edition does not automatically establish majorly significant contributions in his field, nor did he show that such journal edition rankings demonstrate the widespread influence in the field consistent with being majorly significant. Here, the rankings and percentiles relate to where the article stands in the journal edition rather than the impact in the overall field.[6]

In addition, the Petitioner argues that he provided "73 review articles published by prestigious publications, which reported, commented, and cited [to his] research contributions." As discussed, the Petitioner has demonstrated that others have cited to his work in their journal papers. Further, the mere citation of work by others does not automatically show "major significance." Here, the partial articles do not reflect the impact of the Petitioner's research in the overall field beyond the authors who cited to his work. For instance, the Petitioner submitted a partial article entitled, '[redacted]' in which the authors cited to his *Nature Neuroscience* article.[7] However, the article does not distinguish or highlight the Petitioner's research from the over 119 other cited articles, nor does the article credit his work for being majorly significant. In the case here, the Petitioner did not show that his published articles through citations rise to a level of "major significance" as required by this regulatory criterion.

The Petitioner also contends that he offered "media reports about his original discoveries." The record contains two articles posted on sciencenet.cn and ebiotrade.com, which reported on findings of [redacted] University's research that was published in *Nature Neuroscience*. However, the Petitioner did not show that such limited reporting reflects the major significance of the research. For example, he did not demonstrate that the research from the *Nature Neuroscience* article resulted in widespread media coverage and interest, signifying a level of major significance consistent with this regulatory criterion. Instead, the two articles speculate on the possibility of having an impact at some point in the future, such as "in the future, human beings are expected to acquire neural stem cells that produce such cells from the origin of such cells, and then transplant them." While the research indicated promise, the

[6] *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8-9; *see also Visinscaia*, 4 F. Supp. 3d at 134-35 (upholding a finding that a ballroom dancer had not met this criterion because she did not corroborate her impact in the field as a whole).

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

Petitioner did not establish how the work already qualifies as a contribution of major significance in the field, rather than prospective, potential impacts.

Finally, the Petitioner argues that he "submitted detailed testimonials by twelve (12) experts in the field." Although they reflect the novelty of his work, the recommendation letters do not sufficiently articulate how his research and findings have been considered of such importance and how their impact on the field rises to the level of major significance required by this criterion. For example, [redacted] detailed the Petitioner's "finding on the [redacted] in the development of [redacted] neurons."[8] While [redacted] opined that the Petitioner's "groundbreaking research discovery . . . has major importance to the prevention, diagnosis, and treatment of [redacted] disorders," he did not further elaborate and explain, for instance, how the Petitioner's research prevented, assisted in the diagnosis, or led to the treatment of [redacted] disorders.

Likewise, [redacted] described several of the Petitioner's research findings but made broad statements regarding the significance of those findings in the field. For instance, the Petitioner's "significant discovery of the role of [redacted] in the development of [redacted]s has major significance to establishing a model to investigate [redacted] disorders caused by abnormal development and survival of [redacted]s." However, [redacted] did not indicate if any models have been developed. Similarly, the Petitioner's "research discovery represents a major progress in understanding the cause of [redacted] disorders and is highly useful in developing new [redacted] therapies." Again, [redacted] did not indicate whether any [redacted] therapies were created as a result of the Petitioner's research.

Although the letters recount the Petitioner's research and findings and make broad statements regarding their significance in the field, they do contain sufficient information detailing how his work has been of major significance. In fact, some letters hypothesize on the effect of the Petitioner's research at some undetermined time in the future. For example, [redacted] opined that the Petitioner's "research discovery . . . *will* lead to [redacted] with desired functions for the treatment of [redacted] disease," and [redacted] claimed that the Petitioner's "original findings . . . *will* allow us to take better advantage of [redacted] learning and [redacted]" (emphasis added). Here, the letters do not show that the significant nature of his research has already been realized or has been implemented or utilized in a manner consistent with major significance.

The Petitioner's letters do not contain specific, detailed information explaining the unusual influence or high impact his research or work has had on the overall field. Letters that specifically articulate how a petitioner's contributions are of major significance to the field and its impact on subsequent work add value.[9] 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

[8] While we discuss a sampling of the letters, we have reviewed and considered each one.
[9] *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8-9.

criterion.[10] 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).

For the reasons discussed above, considered both individually and collectively, the Petitioner has not shown that his original contributions rise to the level of *major* significance in the field.

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 determination 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 his 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 he 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 manuscripts, conducted research, and published his work, the record does not contain sufficient evidence establishing that he is among the upper echelon in his field.

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.

[10] *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).