U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 8516350

Date: JUN. 1, 2021

Appeal of Texas Service Center Decision

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

The Petitioner, a physical scientist, 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 Texas Service Center initially approved the petition. However, the Director subsequently revoked the approval, concluding that the Petitioner had satisfied only two of the 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). Congress set a very high benchmark for aliens of extraordinary ability by requiring that the Petitioner demonstrate "sustained

national or international acclaim" by presenting "extensive documentation" of the alien's achievements. 56 Fed. Reg. 30703, 30704 (Jul. 5, 1991), 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).

With respect to revocations, section 205 of the Act, 8 U.S.C. § 1155, states, in pertinent part, that the Secretary of Homeland Security "may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204."

Regarding revocation on notice, the Board of Immigration Appeals has stated:

> In *Matter of Estime*, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if unexplained and unrebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

Matter of Ho, 19 I&N Dec. 582, 590 (BIA 1988) (citing *Matter of Estime*, 19 I&N Dec. 450 (BIA 1987)).

By itself, the Director's realization that a petition was incorrectly approved is good and sufficient cause for the revocation of the approval of an immigrant petition. *Id.* The approval of a visa petition vests no rights in the beneficiary of the petition, as approval of a visa petition is but a preliminary step in the visa application process. *Id.* at 589. A beneficiary is not, by mere approval of the petition, entitled to an immigrant visa. *Id*.

II. ANALYSIS

The Petitioner indicates that after he co-founded [redacted], an instrument and apparatus business that measures an [redacted], in 2005, he returned to China in November 2018 but "maintains good disclosure of his activities at [redacted] with [the] University [redacted]

[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 revoking 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. As the Petitioner claims no other criterion, beyond those discussed herein, we consider the remaining eligibility criteria at 8 C.F.R. § 204.5(h)(3) to be waived. After reviewing all of 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 argues that his "work on [redacted] has substantially influenced extending the range of applications for [redacted] through the production of [redacted] for multifunctionalities." 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.

In his brief, the Petitioner contends that his publication in "top journals and conferences [] proves that experts in his field find his work to be majorly significant." Specifically, the Petitioner points to the publication of his articles in *ACS Nano*, *Journal of Materials C*, *Proceedings of the National Academy of Sciences*, *Nature*, *Journal of the American Ceramic Society*, and *International Journal of Applied Glass Science*. However, the Petitioner has not established that publication of articles in highly ranked or popular journals inevitably demonstrates that the field considers the research and work to be an original contribution 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 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. 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. 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.

[1] *See* 6 *USCIS Policy Manual* F.2(B)(2), https://www.uscis.gov/policymanual (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).

In addition, the Petitioner argues that he submitted "multiple articles that have been cited at a rate far exceeding that at which papers published by other [redacted] experts have been cited, each thus constituting an original scholarly contribution of major significance." The Petitioner claims that his "articles have earned more citations that 90 – 99% of other researchers who have published in the same field and time period." The record contains data from InCites Essential Indicators regarding baseline citation rates and percentiles by year of publication for various research fields, including engineering.[2]

The comparative ranking to baseline or average citation rates, however, does not automatically establish majorly significant contributions in the field.[3] Again, the issue for this criterion is whether the Petitioner has made original contributions of major significance in the field rather than where his citation rates rank among the averages of others in his field. 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 having been of major significance, as well as factoring in other corroborating evidence. The Petitioner has not demonstrated, as he asserts, that ten of his articles at the time of filing, using InCites Essential Science Indicators methodology through citation numbers and percentiles, resulted in original contributions of major significance in the field.

In addition, the Petitioner contends that his published articles had "been cited 272 times at the time of filing."[4] 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 identify his original contributions and explain why they are of major significance. The Petitioner did not demonstrate how his cumulative number of citations represents contributions of major significance in the field. Moreover, aggregate citation figures tend to reflect a petitioner's overall publication record rather than identifying which research the field considers to be majorly significant.

The record reflects that the Petitioner initially submitted evidence from *Google Scholar* reflecting that his three highest cited articles received 38 (*International Journal of Applied Glass Sciences*), 38 (*Optics Letters*), and 33 (*Nature*) citations, respectively.[5] Once again, this criterion requires the Petitioner to establish that he has made original contributions 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 shown that the citations for any of his

[2] The documentation reflects that "[c]itation frequency is highly skewed, with many infrequently cited papers and relatively few highly cited papers," and "[c]onsequently, citation rates should not be interpreted as representing the central tendency of the distribution." Thus, the Petitioner did not show the reliability of the figures.

[3] For instance, according to the data from InCites Essential Indicators, engineering papers published in 2013 receiving five citations and in 2014 receiving two citations were in the top 10%, while papers published in 2013 receiving 13 citations and in 2014 receiving five citations were in the top 1%. 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.

[4] The Petitioner also claims that his published articles have now received over a thousand citations. Although the Petitioner indicates an unnamed exhibit as "(Exhibits [citation record], [ESI])," the Petitioner does not provide such exhibit on appeal, nor is there any supporting documentation to corroborate his assertions. In fact, the Petitioner's "Index of Exhibits" does not list any citation evidence. Moreover, the additional citations to articles published after the initial filing will not be considered. The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of filing and continuing through adjudication. *See* 8 C.F.R. § 103.2(b)(1).

[5] The Petitioner did not specify how many citations, if any, for each of his individual articles contained self-citations.

published articles are commensurate with contributions of major significance. The Petitioner did not articulate the significance or relevance of the citations to his articles. For example, he did not demonstrate that these citations are unusually high in his field or how they compare to other articles that the field views as having been majorly significant. Although his citations are indicative that his research has received some attention from the field, the Petitioner did not establish that his citation numbers to his individual articles represent majorly significant contributions in the field.[6]

Further, the record indicates that the Petitioner submitted excerpts of articles, including international articles, which cited to his work.[7] A review of those articles, though, do not show the significance of the Petitioner's research in the overall field beyond the authors who cited to his work.[8] For instance, the Petitioner provided a partial article entitled, [redacted] (*Applied Optics*), in which the authors cited to two of his articles.[9] However, the article does not distinguish or highlight the Petitioner's written work from the other cited papers.[10] The paper does not indicate that the Petitioner's article is authoritative or otherwise viewed as being majorly significant in the field. Instead, the article briefly references his work as a type of technology and technique. The Petitioner has not shown that his published articles through citations rise to a level of "major significance" consistent with this regulatory criterion.

Moreover, the Petitioner argues that he "co-founded [redacted] and the company has been in operation as of July 31, 2005." Although the Director questioned the Petitioner's position and operational status of [redacted] this was not an issue for the decision regarding the Petitioner's eligibility for this criterion. While the Petitioner provides documentation relating to the company's existence, operational status, and ongoing business activity, he did not demonstrate how the documentation represents original contributions of major significance in the field. The Petitioner does not claim, nor does the record reflect, that he made original contributions of major significance in the field through his employment or affiliation with [redacted]

Finally, the Petitioner claims that he presented testimonials attesting to his majorly significant contributions. In general, the letters recount the Petitioner's research and findings, indicate their publications in journals, and point to the citations of his work by others. Although they reflect the novelty of his work, they 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 instance, [redacted] stated that the Petitioner's work in [redacted] "has provided for untold innovations for materials science, nanotechnology, fluid dynamics, and other interrelated disciplined."[11] However, [redacted] did not offer any

[6] *See* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(2) (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).

[7] Although he claims that he "has been widely cited by independent researchers around the world," the Petitioner did not establish how being cited by international researchers shows that his research is considered to be majorly significant.

[8] *See* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(2); *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).

[9] Although we discuss an example article, we have reviewed and considered each one.

[10] The Petitioner provided only a partial page of citations reflecting that the article cited to at least 45 articles.

[11] While we discuss a sampling of letters, we have reviewed and considered each one.

example of the "untold innovations" or describe how the Petitioner has significantly influenced the field. Similarly, while [redacted] claimed that the Petitioner "made a notable impact upon the [redacted]," he did not supplement his letter with specific examples showing how the Petitioner impacted the field in a significant way. Instead, the [redacted] indicated the Petitioner's publication of articles in journals and citations by others.

Furthermore, some of the letters speculate on the potential influence of the Petitioner's work and propose that he will have an impact at some undefined point in the future. For example, [redacted] professor of electrical and computer engineering at [redacted] opined that the Petitioner's research "paves the way for greater applications in spectroscopy, remote sensing, pollutant detection, and defense usages," but he did not elaborate and explain if the research has ever been applied in the field. Likewise, [redacted] professor of material sciences at the [redacted] claimed that "[t]his revolutionary process can be performed by hand," but he did not further discuss whether the Petitioner's research has affected previous procedures, let alone actual implementation in the field. While the letters shows promise in the Petitioner's work, they do not establish how his work already qualifies as a contribution of major significance in the field, rather than prospective, potential impacts. The significant nature of his work has yet to be determined or measured.

Here, 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.[12] 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.[13] 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 he has made original contributions 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 finding that the Petitioner has established the sustained 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

[12] *See* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(2).

[13] *Id. 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).

has not shown that the significance of his work reflects 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 authored scholarly articles, 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.