U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 15279075

Date: MAR. 19, 2021

Appeal of Texas Service Center Decision

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

The Petitioner, a cancer researcher, seeks classification as an individual 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 approved the petition, but later revoked that approval on notice, under the provisions of section 205 of the Act, 8 U.S.C. § 1155, and 8 C.F.R. § 205.2. The Director concluded that the petition had been approved in error, because the record did not establish that the Petitioner had satisfied at least three of ten initial evidentiary criteria, as required. The Director also concluded that, because the Petitioner had not satisfied the necessary criteria, the Petitioner had not established that his entry would prospectively benefit prospectively the United States. The matter is now before us on appeal.

The burden of proof to establish eligibility for the benefit sought remains with the petitioner in revocation proceedings. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Cheung*, 12 I&N Dec. 715 (BIA 1968); and *Matter of Estime*, 19 I&N Dec. 450, 452, n.1 (BIA 1987). Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 203(b)(1)(A) of the Act makes immigrant visas available to individuals 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

The Petitioner earned a doctorate at [redacted] University in 2011, and underwent postdoctoral training at the [redacted] and [redacted] University. At the time he filed the petition in 2018, the Petitioner was a research fellow a[redacted] In April 2019, his fellowship ended but he continued to work at [redacted] as a contractor, employed by [redacted][1]

Because the Petitioner has not indicated or shown that he 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). The Petitioner initially claimed to have satisfied three of these criteria, summarized below:

- (iv), Participation as a judge of the work of others;
- (v), Original contributions of major significance; and
- (vi), Authorship of scholarly articles.

The Director initially approved the petition, but then determined that the approval was in error. In a notice of intent to revoke and again in the final revocation notice, the Director concluded that the Petitioner met two of the criteria, numbered (iv) and (vi). On appeal, the Petitioner asserts that he also meets the criterion numbered (v).

[1] Following the approval of this petition and the issuance of the notice of intent to revoke its approval, the Petitioner filed another immigrant petition on his own behalf, seeking to classify himself as a member of the professions holding an advanced degree, with a national interest waiver of the job offer requirement. The November 2020 approval of that petition remains in effect.

Upon review of the record, we agree with the Director that the Petitioner has satisfied only two of the regulatory criteria. We will discuss the other claimed criterion below.

> *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)*

On appeal, the Petitioner contends that the Director relied on an incomplete review of the evidence. In particular, the Petitioner asserts that the Director did not fully consider letters in the record, and did not give sufficient weight to evidence concerning the Petitioner's published work.

The Petitioner states that "he has regularly published in high-ranking, high-impact journals, demonstrating the significance that others in the field have assigned to his work." The publication of the Petitioner's articles in reputable journals shows that his work meets the publishers' standards of quality, but ultimately those articles must stand on their own merits, rather than by association with particular journals or publishers.

Heavy citation of the Petitioner's published work, relative to others in the field, can help to establish the significance of his published work.[2] The Petitioner has submitted citation data at various points in the proceeding. Because the Petitioner must establish eligibility at the time of filing, as required by 8 C.F.R. § 103.2(b)(1), we will limit discussion to the citation data submitted with the initial filing in November 2018, specifically a table from Clarivate Analytics.

The submitted table indicates that citations to four of the Petitioner's articles ranked between the top 10% and the top 1% for their respective years of publication, relative to articles published in the fields of "Biology & Biochemistry." Of the Petitioner's five other articles, three ranked between 50% and 20%, and one between 20% and 10%. The remaining article was published so near to the table's compilation that meaningful data was not yet available; a single citation clears the thresholds for 50%, 20%, and 10%.

The citation data indicates that some of the Petitioner's published work has attracted attention within the field, but not at a level that demonstrates major significance in the field. This issue is particularly evident when considering review articles in the record. The Petitioner contends that the citation of his work in review articles is evidence of their significance, because review articles "are expressly designed to highlight the most important advances in a given area of research." The two submitted review articles do not warrant such conclusions about the Petitioner's work.

One review article contains two citations to the Petitioner's article about "a novel prognostic biomarker." One citation identifies the Petitioner's article among examples of "[r]ecent work . . . [that] should also be encouraged." This reference, while positive, does not highlight the Petitioner's work as being of particular significance. The other citation indicates that the Petitioner's "observation needs to be confirmed in independent validation studies," before going on to cite an unrelated study with regard to

[redacted]

[2] 6 *USCIS Policy Manual* Part E, retired *Adjudicator's Field Manual* Chapter 22.2(i)(1)(A), https://www.uscis.gov/policymanual.

The other review article includes multiple citations to the Petitioner's work, but several of these citations appear to highlight shortcomings rather than single out the Petitioner's research as especially influential or significant. Citations to the Petitioner's article appear after the following sentences:

> Accuracy is highly dependent on appropriate data normalization. Unfortunately, no definitive housekeeping miRNAs have been established. Small nucleolar RNAs . . . , used as reference genes in intracellular miRNA-based studies, are not applicable to normalization of circulating miRNAs due to their degradation in biofluids which produces low or unstable values.
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> . . . .
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> Current approaches are limited by lack of concordance, data irreproducibility, and contradictory results of individual studies. In particular, the most problematic issues reflect the scientific limitations of the detection strategies and the paucity of samples in validation sets that have not been adequately justified by power analysis.

The review article's conclusions read: [redacted]

[redacted]" Addressing ongoing controversies is an important part of the scientific process, but these comments do not indicate that the Petitioner's contributions in this area have been of major significance in the field.

In an effort to provide further perspective into the significance of his work, the Petitioner submits letters from researchers who have cited his published work. These individuals explain how the Petitioner's publications relate to their own work. Although these individuals describe the Petitioner's research in technical detail, they do not explain how the Petitioner's work is of major significance in the field. For example, a professor at [redacted] University [redacted], Germany, states:

> [The Petitioner] evaluated [redacted] that had previously been compiled from clinical trials. By doing so, he found that the most ideal candidates for [redacted] treatment are [redacted] lung cancer patients with [redacted] In making these findings, [the Petitioner] noted that the effects of such treatment are not worthwhile for patients with [redacted] levels and that it is more appropriate to treat these patients via alternative therapies. As such, [the Petitioner] successfully identified the [redacted] as a [redacted] lung cancer.

The quoted passage provides details about one of the Petitioner's research projects, and indicates that the project is relevant to cancer treatment, but does not specify how, or how much, the findings have had an impact on that treatment. For example, the Petitioner does not show the extent to which the findings have changed cancer treatment protocols or affected survival rates. Furthermore, the journal article containing those findings has 13 authors; the Petitioner's shared credit sheds little light on his specific contributions to the study.

Given the deficiencies in the Petitioner's evidence, we conclude that the petition was approved in error, and we agree with the Director's decision to revoke that approval. Detailed discussion of the remaining issue, concerning the Petitioner's prospective benefit to the United States, cannot change the outcome of this appeal. Therefore, we reserve this issue.[3]

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 lesser 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 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 already at the top of their respective fields, rather than for individuals progressing toward the top. U.S. Citizenship and Immigration Services 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 recognition of his work indicative of the required sustained national or international acclaim or demonstrates 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 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). The Petitioner has worked at some prestigious institutions, but in short-term, low-level, or training capacities.

The Petitioner has not demonstrated eligibility as an individual of extraordinary ability. The revocation of the previously approved petition is affirmed for the above stated reasons.

ORDER: The appeal is dismissed.

[3] *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).