U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 16066129

Date: MAY 18, 2021

Appeal of Nebraska Service Center Decision

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

The Petitioner, a chemical engineer, 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 Nebraska Service Center denied the petition, concluding that the record did not establish that the Petitioner had satisfied at least three of ten initial evidentiary criteria, as required. 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 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,
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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 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 graduate degrees at the State University [redacted] Since 2019, he has worked at [redacted], in O-1 nonimmigrant status.[1] The Petitioner states that his work entails "the development of 'green,' [redacted] organic compounds used widely in the [redacted] products industries." His title at [redacted] "Product Manager, R&D Water Quality."

A. Evidentiary Criteria

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 four of these criteria, summarized below:

- (iii), Published material about the individual in professional or major media;
- (iv), Participation as a judge of the work of others;
- (v), Original contributions of major significance; and
- (vi), Authorship of scholarly articles.

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). The Petitioner does not contest the Director's conclusions regarding the criterion numbered (iii), and therefore we consider that issue to be abandoned.[2]

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[1] We acknowledge that O-1 nonimmigrant status relates to extraordinary ability. Nevertheless, the record of proceeding for the approved nonimmigrant petition is not before us, and we cannot determine whether the facts in that case were the same as those in the present proceeding, or whether the nonimmigrant petition was approved in error.

[2] *See Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012) (stating that when a filing party fails to appeal an issue addressed in an adverse decision, that issue is waived). *See also Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005), citing *United States v. Cunningham*, 161 F.3d 1343, 1344 (11th Cir. 1998); *Hristov v. Roark*, No. 09–

Upon review of the record, we conclude that the Petitioner has satisfied a third regulatory criterion, as explained 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)*

In the denial notice, the Director acknowledged that the Petitioner had made original contributions, but concluded that the Petitioner had not shown them to be of major significance in the field. The Petitioner's principal argument on appeal is that the Director did not address the Petitioner's response to a request for evidence (RFE). The bulk of the appellate brief comprises lengthy quotations from the RFE response. The Petitioner states: "It is unclear as to whether Petitioner's 90+ page RFE response was overlooked or simply ignored as no comprehensive commentary or analysis is made of the evidence presented therein within the denial notice." In the denial notice, the Director quoted, albeit briefly, from eight letters in the RFE response, and described the other materials submitted (specifically "an updated citation summary [and] copies of review articles"). These mentions, although not "comprehensive," refute the claim that the Director "overlooked or simply ignored" the RFE response.

Nevertheless, the record shows the significance of the Petitioner's contributions in the area of simplified [redacted] processes which significantly improved the efficiency of the process while eliminating [redacted] that otherwise contaminate [redacted] products for which purity is an important priority. We will not repeat the highly technical details here, but the Petitioner has established, by a preponderance of the evidence, that some of his contributions have major significance in the field.

Therefore, we conclude that the Petitioner's evidence suffices to meet three initial criteria.

B. Final Merits Determination

Because the Petitioner submitted the required initial evidence, we will evaluate whether he has demonstrated, by a preponderance of the evidence, his sustained national or international acclaim and that he is one of the small percentage at the very top of the field of endeavor, and that his achievements have been recognized in the field through extensive documentation. In a final merits determination, we analyze a petitioner's accomplishments and weigh the totality of the evidence to determine if their successes are sufficient to demonstrate that they have extraordinary ability in the field of endeavor. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20.[3] In this matter, we determine that the Petitioner has not established eligibility.

The satisfaction of three regulatory criteria does not facially establish sustained national or international acclaim, because an individual can satisfy some of those criteria in a manner that neither

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CV–27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (plaintiff's claims were abandoned as he failed to raise them on appeal to the AAO).

[3] *See also* 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* 4 (Dec. 22, 2010), https://www.uscis.gov/legal-resources/policy-memoranda (stating that USCIS officers should then evaluate the evidence together when considering the petition in its entirety to determine if the petitioner has established, by a preponderance of the evidence, the required high level of expertise for the immigrant classification).

reflects prior acclaim nor results in subsequent acclaim. For example, the publication of scholarly articles, as described at 8 C.F.R. § 204.5(h)(3)(vi), is not a privilege reserved for top researchers. Rather, it appears to be routine and expected in many academic disciplines.

Likewise, the regulation at 8 C.F.R. § 204.5(h)(3)(iv) is broad enough to encompass a wide range of activities that involve judging the work of others, whether or not such judging entails, or results from, sustained acclaim in the field. Several of the Petitioner's judging activities involve evaluating submissions to symposia at [redacted] Other activities involve reviewing the work of candidates for graduate degrees, an activity requiring some level of expertise but which, in the aggregate, is routine at countless universities that grant such degrees. Finally, the Petitioner submits a copy of an email message inviting him to serve as a reviewer on the editorial board of *Science Journal of Chemistry*. This message does not show that he actually participated as a judge, as the regulation requires; it is only an invitation to do so in the future. Furthermore, the record does not establish the reputation of the journal or show that its editorial board consists exclusively of acclaimed individuals at the top of the field.

Several of the letters in the record emphasize the Petitioner's citation history. At the time of filing the petition, the Petitioner had 157 citations and an *h*-index of 6, meaning six of his articles had been cited at least six times each. The number of citations increased by the time the Petitioner responded to the RFE, at which time the Petitioner's former graduate advisor at [redacted] stated: "A citation number of 178 is an imposing number for a researcher within four years of being a doctor, especially considering that [the Petitioner] does not work as a Professor at a University." [redacted]'s former dean of the Chemistry faculty states that the Petitioner has amassed "a remarkable [citation] record for a researcher of his age." The regulations limit eligibility to the small percentage at the very top of the field as a whole, rather than a subset of the field that excludes the most accomplished and experienced individuals working in that field.

The Petitioner's graduate advisor also states: "The impressively high quality of [the Petitioner's] work led to the nomination of his thesis as the Best Thesis of the Year 2016 in the field of Chemical Engineering." He does not cite any corroborating evidence, or elaborate as to who nominated the thesis or the scope of the honor (e.g., whether consideration was field-wide, or limited to theses at [redacted]. Without this information, the assertion that the Petitioner was nominated for a student-level prize that he apparently did not receive is of very limited value in this proceeding.

Furthermore, the Petitioner asserts that "the individuals providing testimony included highly esteemed internationally renowned scientists. . . . Surely the information offered by such distinguished individuals deserves a more thorough assessment." This is a valid observation as far as it goes, but at the same time, it cannot suffice for the Petitioner to show the endorsement of "distinguished individuals"; he must show that he has risen to the highest level of distinction himself.

To establish their credentials, these individuals provide various statistics that invite comparison with the Petitioner's own achievements. For instance, the aforementioned professor at [redacted] states: "The international impact of my work can be attested by my 45 *h* index and over 8,750 citations." [redacted] a senior scientific researcher at the [redacted] in [redacted] Russia, states: "I have published over 302 scientific papers, 17 books and 7 patents; my publications have generated 9,211 citations." We would not expect a young researcher to have

produced the same quantity of articles as a researcher with decades of experience, but the burden is on the Petitioner to establish that he has reached the highest levels of recognition in the field regardless of age or experience.

The statute requires "extensive documentation" of sustained acclaim. In this case, the Petitioner relies heavily on letters from individuals who describe the Petitioner's work and assert that it has won him recognition in the field. Almost all of these individuals have demonstrable ties to the Petitioner, mostly through [redacted] Their statements are not first-hand evidence that the Petitioner has earned recognition beyond those who have not worked with him.

An individual who has *not* worked with the Petitioner is [redacted] a neuropharmacologist who is "currently serving as Founding President [redacted]." [redacted] adds that he "was credited with coining the term [redacted] in 1995." We note that a printout from Wikipedia accompanies [redacted]'s letter, presumably to establish his credentials. The Wikipedia printout is dated July 20, 2020, three days before the date of [redacted]'s letter, and it therefore appears that [redacted] supplied this printout himself. The printout reads, in part:

> [redacted] originated the term [redacted]" There is no consensus among [redacted] researchers that empirical evidence exists to justify such a concept.
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> . . . .
>
> [redacted] is not a medically recognized disorder: The diagnostic validity of [redacted] has not been recognized by the [redacted] Association in its diagnostic manual, the [redacted]
>
> . . . .
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> [redacted] *Journal of Reward Deficiency Syndrome and Addiction Science* and founded the company that publishes it, [redacted] was also editor-in-chief of [redacted]'s *Journal of Addiction Research & Therapy* (JART) from 2013 to 2015. Both [redacted] and [redacted] are . . . widely regarded as predatory open-access publishers.

User-edited websites such as Wikipedia are not necessarily authoritative; there are no assurances about the reliability of its content. *See Badasa v. Mukasey*, 540 F.3d 909 (8th Cir. 2008). Nevertheless, the Petitioner's voluntary submission of this printout, ostensibly as supporting evidence to establish [redacted]'s credibility and authority, raises questions that the record does not answer.

[redacted]'s letter also raises questions.[4] He asserts that one factor in the Petitioner's favor is the "high . . . quantity of [the Petitioner's] publications (~50 publications)," but a Google Scholar printout

[4] An accompanying biographical sketch of [redacted] concludes with the following passage:

> [redacted]

in the record identifies fewer than 20 scholarly writings by the Petitioner, including journal articles, conference presentations, patents, and graduate theses.

's letter also includes this passage: "In 2017, I was on the short list of nominees for the in Chemistry." To support this last claim, the Petitioner submits a copy of an article from *Chemistry World* in which various third-party institutions speculated about possible winners of the 2017 The record contains no evidence that was formally nominated for the and no statement from anyone who claims to have nominated Nevertheless, the Petitioner asserts on appeal that we should give substantial weight to this letter because it is from "a nominee."

U.S. Citizenship and Immigration Services (USCIS) may, in its discretion, use as advisory opinions statements from universities, professional organizations, or other sources submitted in evidence as expert testimony. *Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding a foreign national's eligibility. The submission of letters from experts supporting the petition is not presumptive evidence of eligibility. *Id.* USCIS may even give less weight to an opinion that is not corroborated or is in any way questionable. *Id.*

For the above reasons, while the Petitioner has been involved in important research, he has not established significant recognition beyond those who have worked with him at and elsewhere. Issues with some of the submitted letters, discussed above, diminish their evidentiary weight. The record does not establish that the Petitioner has earned sustained national or international acclaim.

III. CONCLUSION

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 recognition of his work is indicative of the required sustained national or

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This passage appears to be an instruction as to how third parties should format s digitally reproduced signature when inserting it into a document. We note that the submitted letter does not conform to these instructions, as it shows the double signature in both characters. (The digital signatures on the letter appear to match, exactly, the signatures on the biographical sketch.) These circumstances raise questions about the origin and provenance of the letter, which diminish its evidentiary weight. If the instructions come from himself, then the letter's deviation from those instructions suggests that someone other than added the signature to the letter, in which case it is not certain that has seen or otherwise approved the letter. If the instructions are from some other source, then the question arises as to why an unnamed third party is in a position to issue instructions as to how to digitally sign letters on s behalf.

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 evidence regarding the Petitioner's reputation is heavily concentrated at [redacted], rather than indicating acclaim throughout the field. As noted above, some of the Petitioner's evidence raises questions which diminish the weight we afford that evidence.

The Petitioner has not demonstrated eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.