U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 17039622

Date: MAY 28, 2021

Appeal of Texas Service Center Decision

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

The Petitioner, a postdoctoral research associate in environmental chemistry, 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 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,
>
> (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 Ph.D. in public health at the University of [redacted], in 2015 and undertook postdoctoral training at [redacted] University, [redacted] from 2015 to 2017. She is now a postdoctoral research associate at the University of [redacted] in H-1B nonimmigrant status. The Petitioner's research concerns [redacted] pollutants.

A. Evidentiary Criteria

Because the Petitioner has not indicated or shown that she received a major, internationally recognized award, she must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x). The Petitioner claims 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 concluded that the Petitioner met two of the criteria, numbered (iv) and (vi). On appeal, the Petitioner asserts that she also meets the criterion at 8 C.F.R. § 204.5(h)(3)(v), relating to original contributions of major significance in the field.

Upon review of the record, we conclude that the Petitioner has shown, by a preponderance of the evidence, that she meets all three claimed criteria. There is no dispute that she has made original contributions; the question is whether those contributions are of major significance in the field.

The Petitioner is the co-author of highly cited articles relating to the detection of certain pollutants in the [redacted] The record indicates that other researchers are using the data that the Petitioner gathered, as well as detection and measurement techniques that the Petitioner developed or refined. We will not repeat the highly technical details here, but the Petitioner has established, by a preponderance of the evidence, that some of her contributions have major significance in the field.

B. Final Merits Determination

Because the Petitioner submitted the required initial evidence, we will evaluate whether she has demonstrated, by a preponderance of the evidence, her sustained national or international acclaim and that she is one of the small percentage at the very top of the field of endeavor, and that her 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.[1] In this matter, we determine that the Petitioner has not established eligibility.

Given the structure of the regulations and the two-step analysis described in *Kazarian*, the satisfaction of three evidentiary criteria does not automatically or presumptively establish eligibility. Some criteria are much more easily satisfied than others, and we must consider each piece of evidence through the lens of sustained acclaim.

The record as a whole does not establish sustained national or international acclaim. The Petitioner has written scholarly articles and peer reviewed manuscripts by others, but the record does not show that she has done so at a level that elevates her above most others in her field, or that these activities amount to rare privileges rather than expected activities of a researcher in that field. Some activities satisfy regulatory criteria, but in a manner that neither 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. The record shows that the Petitioner was reviewing manuscripts while she was still a doctoral student, and that peer review is a routine part of the publication process rather than a rare privilege extended only to top experts. (A document in the record refers to "2 million researchers" performing peer review, and describes efforts to recruit still more reviewers.) The Petitioner has not explained why her review of a high number of manuscripts equates to acclaim. She has not shown that the most accomplished and recognized researchers perform more peer review.

The Petitioner has solicited letters from other researchers who speak highly of her talents and contributions, but the Petitioner does not establish that these views represent a consensus that demonstrates sustained national or international acclaim. In this context, we note that at the time of filing, the Petitioner stated that she seeks employment as an assistant professor at [redacted] University, or an unspecified position with the [redacted] of the U.S. Environmental Protection

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

Agency in [redacted] The record contains no evidence that either of those prospective employers offered her a position. The Petitioner has not established a demand for her services commensurate with her claimed reputation in the field. Related to the above point, her status as a postdoctoral research associate indicates that, at the time of filing, the Petitioner was still undergoing training (albeit at a high level) under the direction of another researcher. It is possible for a researcher to reach the top of the field at such a relatively early stage of one's career, but there is no presumption that involvement in influential research at the postdoctoral stage is indicative of individual acclaim. More often, it results from affiliation with a mentor or laboratory with an already-established reputation. Employment with a prestigious institution shows that the institution has a high opinion of one's qualifications, but such employment does not inherently confer national or international acclaim.

The Petitioner places significant emphasis on citations to her published work. The record does not establish a pattern of consistently high citation of that work. Rather, three of her 32 articles account for half the citations as of the filing date. Furthermore, the Petitioner has not shown that her most recent work before the filing date at the University [redacted] has attracted comparable attention. The Petitioner submits charts showing percentile rankings of article citations, but owing to the nature of such data, even a very small number of citations can reach a high percentile during the period immediately following publication.

While the Petitioner has shown that she participated in well-received research, the record as a whole does not show that she has attained the sustained acclaim that the statute and regulations require.

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. 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 that the recognition of her work is 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 not demonstrated eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.