U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 18315172

Date: SEPT. 9, 2021

Appeal of Texas Service Center Decision

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

The Petitioner, a researcher in the field of neurology, 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 withdraw the Director's decision and remand the matter for entry of a new decision consistent with our discussion below.

I. LAW

Section 203(b)(1)(A) of the Act makes immigrant visas available to individuals with 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, provided that the individual seeks to enter the United States to continue work in the area of extraordinary ability, and the individual'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). The regulation at 8 C.F.R. § 204.5(h)(4) allows a petitioner to submit

comparable evidence if they are able to demonstrate that the standards at 8 C.F.R. § 204.5(h)(3)(i)–(x) do not readily apply to the individual's occupation.

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 neurobiology at [redacted] University, China, in 2010. Some of her doctoral studies also took place at the University of [redacted]. Following an associate professorship, also at [redacted] the Petitioner entered the United States in May 2019 as a J-1 nonimmigrant exchange visitor to work as a research scholar at [redacted]

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, relating to participation as a judge of the work of others; original contributions of major significance; and authorship of scholarly articles.

The Director concluded that the Petitioner met the criteria relating to judging and authorship of articles. On appeal, the Petitioner asserts that she meets all three claimed criteria, and that the Director therefore should have proceeded to a final merits determination.

Upon review of the record, we agree with the Director that the Petitioner has satisfied the criterion at 8 C.F.R. § 204.5(h)(3)(v), relating to original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field. The Petitioner asserts that she satisfies this criterion because she has made several important discoveries in her field, described in highly-cited scholarly articles. In denying the petition, the Director acknowledged the citation of the Petitioner's work, but concluded that the Petitioner did not show "the reason the citations are notable or the impact the 'notable' citations have had on the field as a whole." The Director also acknowledged the Petitioner's submission of reference letters, but concluded that these letters are not "preexisting, independent, and objective evidence" of the significance of the Petitioner's work. As explained below, we disagree with the Director's conclusions, to some extent.

At the time the Petitioner filed the petition, the Google Scholar database showed over 1000 citations of her published articles, with four articles having been cited over 100 times each. The U.S. Citizenship and Immigration Services (USCIS) *Policy Manual* states "a goodly number" of such citations "may be probative of the significance of the person's contributions to the field of endeavor."[1] Hundreds more

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

citations have appeared more recently. These newest citations do not establish eligibility at the time of filing, but they do speak to the field's ongoing reliance on the cited works.

The Petitioner has, therefore, overcome the only stated ground for denial of the petition. Nevertheless, the record does not support approval of the petition. Granting the third initial criterion does not suffice to establish eligibility for the classification the Petitioner seeks. The Director must undertake a final merits determination to analyze the Petitioner's accomplishments and weigh the totality of the evidence to determine if they establish extraordinary ability in the Petitioner's 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.[2]

When considering the evidence submitted to show the Petitioner's acclaim and recognition in the field, the Director must consider whether or not the record corroborates assertions both from the Petitioner and in letters written specifically to support the petition. For example, an associate editor of the *Journal of Cerebral Blood Flow & Metabolism* claims "we only invite extraordinary and top scientists to review our manuscripts." An associate editor of *CNS Neuroscience & Therapeutics* claims the journal invited the Petitioner to review manuscripts "due to her extraordinary research ability and her outstanding reputation." The record lacks objective documentary support for these claims.

Some messages inviting the Petitioner to review manuscripts include this passage: "If you are unable to find the time to referee for us we would value your recommendation of one of your colleagues or of any expert in the field." There is no reference to any credentials or level of achievement apart from subject matter expertise. Without objective evidence to show that the journal publishers limit their peer review opportunities to recognized and acclaimed researchers, the Petitioner's peer review work does not establish the acclaim and recognition required for the classification she seeks.

Moreover, a *curriculum vitae* in the record shows that the Petitioner's doctoral advisor is an "editorial board member for 13 professional journals," including both of the journals named above. That advisor signed several of the peer review invitations from *CNS Neuroscience & Therapeutics*. This close involvement by the Petitioner's mentor appears to have direct and significant consequences regarding claims as to how the Petitioner came to be a peer reviewer for those journals. The Director must keep such factors in mind when weighing the record for the final merits determination.

III. CONCLUSION

Because the Petitioner has overcome the only stated ground for denial, we remand this proceeding so that the Director can render a final merits determination in keeping with the *Kazarian* framework.

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.

[2] *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).