U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19496791

Date: FEB. 24, 2022

Appeal of Texas Service Center Decision

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

The Petitioner, an orthopaedic scholar, 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 although the Petitioner satisfied at least three of the initial evidentiary criteria, as required, he did not show his sustained national or international acclaim and demonstrate that he is among that small percentage at the very top of the field of endeavor.

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). The implementing regulation

at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the 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 categories 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). This two-step analysis is consistent with our holding that the "truth is to be determined not by the quantity of evidence alone but by its quality," as well as the principle that we examine "each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true." *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

II. ANALYSIS

A. Evidentiary Criteria

Because the Petitioner has not claimed or established 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 Director determined that the Petitioner met four of the claimed evidentiary criteria relating to awards at 8 C.F.R. § 204.5(h)(3)(i), published material at 8 C.F.R. § 204.5(h)(3)(iii), judging at 8 C.F.R. § 204.5(h)(3)(iv), and scholarly articles at 8 C.F.R. § 204.5(h)(3)(vi). However, the Director concluded that the Petitioner did not show that he garnered sustained national or international acclaim and that his achievements have been recognized in the field of expertise, demonstrating that he is one of that small percentage who has risen to the very top of the field. On appeal, we will review the totality of the evidence in the context of the final merits determination below.[1]

B. Final Merits Determination

As the Director concluded that the Petitioner submitted the requisite initial evidence, we will evaluate whether he has demonstrated, by a preponderance of the evidence, his sustained national or

[1] *See* 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* 13 (Dec. 22, 2010), https://www.uscis.gov/policymanual/HTML/PolicyManual.html (providing that objectively meeting the regulatory criteria in part one alone does not establish that an individual meets the requirements for classification as an individual of extraordinary ability under section 203(b)(1)(A) of the Act).

international acclaim,[2] 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 an individual's accomplishments and weigh the totality of the evidence to determine if his successes are sufficient to demonstrate that he has 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 shown his eligibility.

At initial filing, the Petitioner provided a statement indicating:

> For the past six years I have been actively involved in the study of Orthopaedic Surgery with a focus in sports medicine which includes the treatment of [redacted] disorders. Although medical school has a broadly focus curriculum, [redacted] is an extremely competitive institution at which I was fortunate enough to be accepted. Since I matriculated, I have honed my studies in the field of sports medicine . . . .
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> Furthermore, my background, educational career, and research endeavors afforded me admission to [redacted] School of Business at [redacted] a [redacted] business school in the U.S., where I have been studying to earn my Master of Business Administration (MBA). This has further developed my leadership skills, knowledge of healthcare economics as well as the ability to improve the business and operational side of medicine especially as it relates to Orthopaedic Sports Medicine. I have been able to further the science as well as business of [redacted] care in the U.S. with an eye towards both cost containment and meaningful patient care . . . .

At the time of the initial filing of the petition, as indicated above, the Petitioner currently pursues an MBA degree at [redacted] and previously attended [redacted] for a bachelor of science degree. Moreover, the record reflects that the Petitioner presently serves as a preceptor for first year medical students at the [redacted] School of Medicine [redacted] at [redacted] and conducted an orthopaedic surgery clerkship a [redacted] and participated as a research coordinator for sports medicine at [redacted] General Hospital [redacted] as part of his medical school training. Although the Director determined that the Petitioner has received awards, garnered published material about him, judged others, and authored scholarly articles, the record does not demonstrate that he enjoys a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990).

In 2016 and 2017, the Petitioner received scholarships [redacted] from the Government of the Republic of [redacted] The record contains a letter from [redacted] president of the fund, stating that "[t]he aim of the Fund [redacted] is to recognize talented, successful and diligent young people and provide them with the necessary assistance in achieving the above-average results

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[2] *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 14 (stating that such acclaim must be maintained and providing *Black's Law Dictionary's* definition of "sustain" as to support or maintain, especially over a long period of time, and to persist in making an effort over a long period of time).

[3] *Id.* at 4 (instructing 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 of the immigrant classification).

in order to be the basis for the future social-economic development of the Republic of [redacted] In addition, the Government of the Republic of [redacted] awarded the Petitioner "The National Merit Order" for "the best young researcher of II cycles of studies" in 2018.[4] Here, the Petitioner has not demonstrated that his scholarship and academic awards reflect a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723 at 59. Rather, the awards indicate recognition for financial assistance and academic pursuits and do not show that that his "achievements have been recognized in the field of expertise." *See* section 203(b)(1)(A)(i) of the Act and 8 C.F.R. § 204.5(h)(3). USCIS has long held that even athletes performing at the major league level do not automatically meet the statutory standards for classification as an individual of "extraordinary ability." *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994). He has not established, for instance, that he competed against other accomplished orthopaedic scholars or how his scholarship and academic awards compare to other renowned orthopaedic scholars, showing that he "is one of that small percentage who [has] risen to the very top of the field of endeavor" rather than receiving academic awards to pursue an education. *See* 8 C.F.R. § 204.5(h)(2).

Further, regarding media coverage, the Petitioner offered four items reflecting published material about him from 2014 – 2017. However, the Petitioner did not demonstrate that such press coverage, without any since 2017, is consistent with the sustained national or international acclaim necessary for this highly restrictive classification. *See* section 203(b)(1)(A) of the Act. Further, the Petitioner did not show how his overall media coverage is indicative of a level of success with being among that small percentage who has risen to the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2). Thus, the Petitioner did not establish that the limited media reporting on him and his activities reflect a career of acclaimed work in the field. *See* H.R. Rep. No. 101-723 at 59. The commentary for the proposed regulations implementing section 203(b)(1)(A)(i) of the Act provides that the "intent of Congress that a very high standard be set for aliens of extraordinary ability is reflected in this regulation by requiring the petitioner to present more extensive documentation than that required" for lesser classifications. 56 Fed. Reg. 30703, 30704 (July 5, 1991).[5] Here, the Petitioner's minimal media exposure does not meet this very high standard.

As it relates to the Petitioner's service as a judge of the work of others, an evaluation of the significance of his experience is appropriate to determine if such evidence indicates the required extraordinary ability for this highly restrictive classification. *See Kazarian,* 596 F. 3d at 1121-22.[6] In his capacity as a preceptor for first year medical students at [redacted] he "[p]rovides end of year evaluation of students relative to their achievement of the goals and objectives of the [redacted] course."[7] Here, the Petitioner's recent judging experience involves evaluating the work of first year medical students rather than nationally or internationally renowned medical professionals.

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[4] The Petitioner previously contended that he also made two presentations during the 2016 Annual Meeting of the [redacted] Association of North America; however, the Petitioner did not demonstrate that he received any prizes or awards from these presentations, let alone nationally or internationally recognized prizes or awards for excellence in the field.

[5] *See also* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 2.

[6] *See also* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 13 (stating that an individual's participation should be evaluated to determine whether it was indicative of being one of that small percentage who have risen to the very top of the field of endeavor and enjoying sustained national or international acclaim).

[7] *See* letter from [redacted]

Further, the Petitioner did not establish that these evaluations contribute to a finding that he has a career of acclaimed work in the field or indicative of the required sustained national or international acclaim. *See* H.R. Rep. No. 101-723 at 59 and section 203(b)(1)(A) of the Act. He did not show, for example, how his limited experience in evaluating aspiring medical professionals compares to others at the very top of the field. The Petitioner did not establish, for instance, that he garnered wide attention from the field based on his evaluation work. Moreover, serving as a judge or evaluator does not automatically demonstrate that an individual has extraordinary ability and sustained national or international acclaim at the very top of his field. *Cf., Price*, 20 I&N Dec. at 954 (stating that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard). Without evidence that sets him apart from others in his field, such as evidence that he has a consistent history of reviewing or judging recognized, acclaimed experts in his field, the Petitioner has not shown that his judging experience places him among that small percentage who has risen to the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2) and 56 Fed. Reg. at 30704.

Likewise, authorship and publication do not automatically place one at the top of the field.[8] The record reflects that the Petitioner presented evidence showing that he authored 14 journal articles. However, the Petitioner did not demonstrate that his publication record of 14 articles in a five-year timeframe is consistent with having a career of acclaimed work, sustaining national or international acclaim, and being among the small percentage at the very top of his field. *See* H.R. Rep. No. at 59, section 203(b)(1)(A) of the Act, and 8 C.F.R. § 204.5(h)(2). The Petitioner, for instance, did not show the significance of his authorships or how his publications compare to others who are viewed to be at the very top of the field.

Moreover, the citation history or other evidence of the influence of his written work can be an indicator to determine the impact and recognition that his publications have had on the field and whether such influence has been sustained. For example, numerous independent citations for an article authored by the Petitioner may provide solid evidence that his work has been recognized and that other orthopaedic scholars have been influenced by his work. Such an analysis at the final merits determination stage is appropriate pursuant to *Kazarian,* 596 F. 3d at 1122. Here, the Petitioner provided evidence reflecting that his co-authored material has been cited 223 times, with his two highest cited articles receiving 102 citations.[9] While the citation of his work shows that some in his field have referenced it, the Petitioner has not established that such citations are sufficient to demonstrate a level of interest in the field commensurate with sustained national or international acclaim. *See* section 203(b)(1)(A) of the

[8] *See also* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 13 (providing that publications should be evaluated to determine whether they were indicative of being one of that small percentage who has risen to the very top of the field of endeavor and enjoying sustained national or international acclaim).

[9] Both articles were published in *The American Journal of Sports Medicine*; [redacted] and "[redacted]." On appeal, the Petitioner provides updated ResearchGate and Google Scholar information. However, we will not consider this evidence for the first time on appeal as it was not presented before the Director. *See Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988) (providing that if "the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the denial, we will not consider evidence submitted on appeal for any purpose" and that "we will adjudicate the appeal based on the record of proceedings" before the Chief); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). Moreover, the updated information relates to events occurring after the filing of the petition. The petitioner must establish that all eligibility requirements for the benefit have been satisfied from the time of filing and continuing through adjudication. *See* 8 C.F.R. § 103.2(b)(1).

Act. In addition, the Petitioner has not shown that the citations to his work represent attention at a level consistent with being among that small percentage at the very top of his field.[10] *See* 8 C.F.R. § 204.5(h)(2) and 56 Fed. Reg. at 30704.

Likewise, the Petitioner did not show that his presented material garnered him any national or international acclaim. *See* section 203(b)(1)(A) of the Act. Although he offered evidence showing that he presented two papers, the Petitioner did not demonstrate the significance of his presentations or how they impacted the field consistent with a very high standard requiring the petitioner to submit more extensive documentation than that required for lesser classifications. *See* 56 Fed. Reg. at 30704.

Beyond the four criteria determined by the Director that the Petitioner satisfied, we consider additional documentation in the record in order to determine whether the totality of the evidence demonstrates eligibility as an individual of extraordinary ability. Here, for the reasons discussed below, we find that the evidence does not establish that the Petitioner has sustained national or international acclaim and is among the small percentage of the top of his field.

In support of the significance of his contributions and roles, the Petitioner submitted a few recommendation letters that summarized his work as a student, as well as his accomplishments with [redacted] and [redacted].[11] For example, [redacted] discussed the Petitioner's study in treating [redacted] instability, and [redacted] indicated the Petitioner's implementation of 3D printing and its integration with [redacted] software. Although they praise the Petitioner's work, they do not contain sufficient information and explanation to show that he is viewed by the overall field, rather than by a solicited few, among the upper echelon or that he has garnered recognition on a national or international scale, consistent with being among the small percentage at the very top of the field of endeavor. Further, the Petitioner did not establish that he has made impactful or influential contributions in the greater field reflecting a career of acclaimed work in the field, garnering the required sustained national or international acclaim. *See* H.R. Rep. No. at 59 and section 203(b)(1)(A) of the Act. Moreover, the Petitioner did not establish how his roles with [redacted] or [redacted] resulted in widespread acclaim from his field, that he drew significant attention from the greater field, or that overall field considers him to be at the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2) and 56 Fed. Reg. at 30704.

The record as a whole, including the evidence discussed above, does not establish the Petitioner's eligibility for the benefit sought. Here, the Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than those progressing toward the top. *See Price*, 20 I&N Dec. at 954 (concluding that even major league level athletes do not automatically meet the statutory standards for classification as an individual of "extraordinary ability,"); *Visinscaia*, 4 F. Supp. 3d at 131 (internal quotation marks omitted) (finding that the extraordinary ability designation is "extremely restrictive by design,"); *Hamal v. Dep't of Homeland Sec. (Hamal II)*, No. 19-cv-2534, 2021 WL 2338316, at *5 (D.D.C. June 8, 2021) (determining that EB-1 visas are "reserved for a very small percentage of prospective immigrants"). *See also Hamal v.*

[10] The record contains citation statistics of selective orthopaedic surgeons from ResearchGate. However, the majority of the sample has higher citations than the Petitioner, with one individual garnering almost 1,400 citations.

[11] On appeal, the Petitioner submits residency interview invitations; however, the documentation relates to events occurring after the initial filing and was not presented before the Director. *See* 8 C.F.R. 103.2(b)(1) and *Soriano*, 19 I&N Dec. at 766; *see also Obaigbena*, 19 I&N Dec. at 533.

Dep't of Homeland Sec. (Hamal I), No. 19-cv-2534, 2020 WL 2934954, at *1 (D.D.C. June 3, 2020) (citing *Kazarian,* 596 at 1122 (upholding denial of petition of a published theoretical physicist specializing in non-Einsteinian theories of gravitation) (stating that "[c]ourts have found that even highly accomplished individuals fail to win this designation")); *Lee v. Ziglar*, 237 F. Supp. 2d 914, 918 (N.D. Ill. 2002) (finding that "arguably one of the most famous baseball players in Korean history" did not qualify for visa as a baseball coach). While the Petitioner need not establish that there is no one more accomplished to qualify for the classification sought, the record is insufficient to demonstrate that he has sustained national or international acclaim and is among the small percentage at the top of his field. *See* section 203(b)(1)(A)(i) of the Act and 8 C.F.R. § 204.5(h)(2).

III. CONCLUSION

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.