Non-Precedent Decision of the Administrative Appeals Office

In Re: 19905221

Date: JUL 28, 2022

Appeal of Texas Service Center Decision

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

The Petitioner, a neuroscientist, 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 met the initial evidence requirements of this classification by meeting three of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3). 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 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; who seek to enter the United States to continue work in the area of extraordinary ability; and whose 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 the initial evidence requirements through either a one-time achievement or meeting three lesser criteria, 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 is a neuroscientist and is currently employed as a postdoctoral researcher at the University of [redacted] His research is focused on one of the aspects of [redacted] disease called [redacted]

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; namely, participation as a judge of the work of others at 8 C.F.R. § 204.5(h)(3)(iv); original contributions of major significance at 8 C.F.R. § 204.5(h)(3)(v); and authorship of scholarly articles at 8 C.F.R. § 204.5(h)(3)(vi).

The Director concluded that the Petitioner had satisfied two criteria, relating to judging the work of others and authorship of scholarly articles. The Petitioner's documented involvement in peer review for scientific journals constitutes participation as a judge of the work of others in the same or allied field under 8 C.F.R. § 204.5(h)(3)(iv). In addition, the record reflects that the Petitioner has written several scholarly articles in professional publications in his field under 8 C.F.R. § 204.5(h)(3)(vi). On appeal, the Petitioner maintains that he also satisfied the original contributions criterion.

> *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).

To satisfy this criterion, a petitioner must establish that not only have they made original contributions to the field, but also that those contributions have been of major significance. For example, a petitioner may show that the contributions have been widely implemented throughout the field, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance in the field.

The Director acknowledged that the Petitioner submitted letters of recommendation and evidence of his publication of various scholarly articles in the field of neuroscience. The Director concluded, however, that while the record reflects that the Petitioner has made research contributions in the field of neuroscience and the specialized field of [redacted] disease, the evidence did not demonstrate that his research had a broader impact or influence, such that his contributions could be considered of major significance in the field. The Director emphasized that the letters were not supported by sufficient independent and objective evidence establishing the significance of the Petitioner's contributions. On appeal, the Petitioner asserts that the Director erred by improperly expanding the Petitioner's field of endeavor, and also asserted that he did not afford the expert opinion letters proper evidentiary weight.

In reviewing this criterion, we have considered the submitted letters,[1] published materials, and the Petitioner's peer review of articles in the field, as well as his statement in support of the petition. For the reasons discussed below, the record does not establish that the Petitioner's research contributions are of major significance in his field.[2]

In his statement, the Petitioner explained that he is a research scientist specializing in the field of neuroscience, and that he has been working in this area of science for over 12 years. He indicated that he has conducted his research at various institutions during the course of his career, including the University of in Germany, the University of in Portugal, , the University of in Brazil, and the University of where he is currently performing post-doctoral research.

Counsel for the Petitioner explained in a letter of support that the Petitioner has found and developed a new way to a phenomenon in which patients may exhibit sudden and temporary abilities, in in a model, thus making it possible to conduct in-depth studies of its mechanism. He further claimed that this work is groundbreaking and constitutes a significant scientific breakthrough that will pave the way for a better life for patients and their families, noting that of 28 articles written on this subject, the Petitioner had authored six of those articles. Counsel indicated that the Petitioner's contributions have made it possible to prove, isolate, and map out the precise mechanisms in the part of the brain involved in

The Petitioner's supporting evidence includes numerous letters of support from others in the field. A letter from Visiting Assistant Professor in the Department of Educational Leadership for the School of Education at the University of states that the Petitioner's development of the that replicates seen in humans is the first of its kind and reveals brain mechanisms previously not known to be involved in the phenomenon. Associate Professor and Head of the Physical Education Program at the University of states that the Petitioner's research on this matter, which was published in the journal *Behavioral Brain Research*, has received much attention from scientific experts and clinicians. He further noted that the Petitioner was invited to present his findings at numerous conferences hosted by the International Behavioral Neuroscience Society and the Society for Neuroscience, noting that scientific accomplishments are a prerequisite to receiving such invitations. Professor in the Department of Basic and Clinical Psychology and Psychobiology at the University (Spain), again references the Petitioner's replication of in a model using stimulation, noting that this novel discovery

[1] While we may not discuss every letter and supporting document in this decision, we have reviewed and considered each one in evaluating whether the Petitioner established that he meets this criterion.

[2] On appeal, the Petitioner asserts that the Director erroneously considered the Petitioner's contributions to the field of neuroscience as a whole, rather than the subfield of study related to disease. However, we note that the decision discusses the lack of independent, objective evidence to demonstrate the nature of the Petitioner's contributions in both the broad field of neuroscience as well as the narrow subfield of disease as the basis for denial. Moreover, we exercise *de novo* review of all issues of fact, law, policy, and discretion. *See Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). This means that we look at the record anew and are not required to defer to findings made in the initial decision.

"opens doors to several different techniques and approaches that can now be used to thoroughly understand the brain mechanism underlying [redacted]"

[redacted] Professor of Experimental and Biology Psychology at the [redacted] University in [redacted] Germany, states that the Petitioner has "made major contributions not only to the understanding of the [redacted] but also to the development of a new method to investigate [redacted]" He notes again that the Petitioner's [redacted] model was the first of its kind and therefore substantiates his original contributions to the field.

A letter from [redacted] Assistant Professor at [redacted] University School of Medicine, School of Endocrinology and Metabolism, praises the Petitioner's academic and research achievements and notes that his work is internationally recognized and that he has received numerous grants and travel awards that permit him to disseminate his findings throughout the world. She concludes that she has no doubt that the Petitioner, "with all of his contributions and achievements, has ascended to the very top of his field of endeavor." Further, in an updated letter submitted in response to the Director's request for evidence, she emphasizes that the Petitioner was the first scientist to discover and prove the crucial role of the [redacted] disease.

These, as well as other reference letters and documents not specifically discussed here, sufficiently confirm that the Petitioner's research, specifically his development of the [redacted] model that replicates [redacted] seen in humans, is original and unique. Notwithstanding this finding, however, the Petitioner has not sufficiently shown that his research constitutes "contributions of major significance in the field," as required under 8 C.F.R. § 204.5(h)(3)(v).

While the record includes some evidence that the Petitioner's research has been recognized in the field of neuroscience and subfield related to [redacted] research, it is insufficient to confirm that his work has been widely implemented throughout the field, has remarkably impacted or influenced the field, or has otherwise risen to a level of major significance. Indeed, some of the Petitioner's references indicate that his research findings might one day impact the field in a significant way. For example, a letter from [redacted] Professor and Director of the [redacted] in the Department of Psychological Sciences Department of Biomedical Engineering at the University of [redacted] states that "the results of his research are exceptional and have fundamentally changed our basic concepts of understanding how the brain processes [redacted] and [redacted] into motion and how we may treat [redacted] disease." Although she states that the Petitioner's line of work "has already broadly impacted the understanding of [redacted] and *could* lead to novel clinical approaches to treating [redacted] disease, there is no indication that his findings have already resulted in such approaches or treatments. (Emphasis added). It appears Professor [redacted] equates the Petitioner's discoveries that have the potential to be significant within the field with developments that have already impacted the field. Such a correlation is not appropriate as the regulation requires contributions that have already made a significant impact.

Likewise, Professor [redacted] states in his letter that the Petitioner's contributions "*could* provide novel [redacted] approaches to treat [redacted] (Emphasis added). Moreover, Professor [redacted] comments on the use of the Petitioner's [redacted] model in the study of other disorders in a clinical setting, specifically his investigation of whether [redacted] could ameliorate [redacted] deficits induced by [redacted] an

antipsychotic drug. She notes that millions of patients on antipsychotics "*may benefit* from these findings because they will aid the development of clinical therapies to treat several symptoms." (Emphasis added). These reference letters discuss the potential impact of the Petitioner's work. This criterion, however, requires evidence that his work has already made contributions of major significance in the field. Speculations of his work's potential impact, thus, are insufficient to satisfy this criterion. *See* 8 C.F.R. § 204.5(h)(3)(v).

We note that many of the letters also discuss the published findings of the Petitioner, and reference various articles relating to his work. For example, [redacted] Board of Trustees member and Distinguished Professor Head of [redacted] in the University of [redacted] Department of Psychology, comments that the Petitioner has "published some outstanding papers" and that "the papers stemming from his Ph.D. work have contributed greatly to our understanding of the [redacted] disease." The expert letters, however, do not describe the manner in which these articles are influential or heavily relied upon. Although some of the experts note that the Petitioner's articles are published in top publications, none of the experts indicate that he or she has cited to the Petitioner's work within their own published research.

The Director noted that at the time of the decision, Google Scholar indicated that the Petitioner had garnered 27 citations, including self-citations, to four of his publications. While this moderate amount of citations demonstrates awareness of the Petitioner's work and its value, not every researcher who performs moderately valuable research has inherently made a contribution of major significance to the field as a whole. It remains the Petitioner's burden to document the actual impact of his articles. The Petitioner has not provided probative evidence to establish how those findings or citations of his work by others have significantly contributed to his field as required by this regulatory criterion. The Petitioner did not submit documentation of his citation history, nor did he submit any documentary evidence demonstrating that his articles have been unusually influential, such as articles that discuss in-depth the Petitioner's findings or credit the Petitioner with influencing or impacting the field. In this case, the Petitioner's documentary evidence is not reflective of having a significant impact in the field. The Petitioner has not established how those findings or citations of his work by others have demonstrated that his work has been seminal in, or has significantly contributed to, his field as a whole.

We note the Petitioner's assertion on appeal that the expert letters were not sufficiently considered by the Director. The opinions of the Petitioner's references are not without weight and have been considered above. However, for the reasons we have discussed, the letters and other evidence in the record fail to demonstrate that the Petitioner's work constitutes contributions of "major significance" in the field. U.S. Citizenship and Immigration Services (USCIS) may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See 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 an individual's eligibility for the benefit sought. *Id.* The submission of reference letters supporting the petition is not presumptive evidence of eligibility; USCIS may, as we have in this case, evaluate the content of those letters as to whether they support the individual's eligibility. *See id.* at 795-96. Thus, the content of the references' statements are important considerations

Letters from experts in the field that specifically articulate how an individual's contributions are of major significance to the field and its impact on subsequent work add value. On the other hand, letters that lack specifics and use hyperbolic language do not add value and are not considered to be probative

evidence that may form the basis for meeting this criterion.[3] Here, the letters do not contain specific, detailed information explaining the unusual influence or high impact that the Petitioner's work has had in the overall field. While the writers praise the Petitioner's research and applaud his breakthrough with regard to the development of the [redacted] model that replicates [redacted] seen in humans, it is unclear whether this breakthrough finding has been developed and adopted by a large enough portion of the field to be considered a contribution of major significance in the field as a whole. As noted above, several of the experts comment on the potential for the Petitioner's [redacted] model to aid in the development of clinical therapies and approaches in treating [redacted] disease and other neurologic disorders. If the breakthrough has the likely potential to impact the field at some future time, this is not sufficient to demonstrate eligibility under this criterion. Contributions of major significance connotes that the Petitioner's work has significantly impacted the field. *See* 8 C.F.R. § 204.5(h)(3)(v); *see also Visinscaia*, 4 F. Supp. at 135-136.

The record, including the reference letters, does not sufficiently establish that the Petitioner's original work has been unusually influential, has substantially impacted the field, or has otherwise risen to the level of musical contributions of major significance. As such, he has not demonstrated that he meets this regulatory criterion. *See Visinscaia*, 4 F. Supp. 3d at 134-35 (upholding a finding that a ballroom dancer had not met this criterion because she did not demonstrate her impact in the field as a whole).

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. 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 established that he is a scientific researcher who has gained some recognition for his work. But he has not shown that this recognition rises to the required level of sustained national or international acclaim, or that it is consistent with 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 of individuals who have risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act; 8 C.F.R. § 204.5(h)(2).

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

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

ORDER: The appeal is dismissed.