U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22045843

Date: NOV. 7, 2022

Appeal of Nebraska Service Center Decision

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

The Petitioner, a research associate employed by the [redacted], seeks classification as an individual of extraordinary ability in the field of [redacted] physics. *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. The Director concluded that the Petitioner had submitted evidence meeting three of the ten initial evidentiary criteria listed under 8 C.F.R. § 204.5(h)(3)(i)-(x), but that he did not present sufficient documentation showing his sustained national or international acclaim and demonstrating that he was among the small percentage at the very top of the field of endeavor.

On appeal, the Petitioner contends that the Director erred in the final merits determination. He maintains that he has established eligibility to be classified as an individual of extraordinary ability.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).[1] 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, provided that the individual seeks to enter the United States to continue

[1] If a petitioner submits relevant, probative, and credible evidence that leads us to believe that the claim is "more likely than not" or "probably" true, he or she has satisfied the preponderance of the evidence standard. *Chawathe*, 25 I&N Dec. at 375-76.

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 the petitioner does not submit this evidence, then the petitioner 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 it is able to demonstrate that the standards at 8 C.F.R. § 204.5(h)(3)(i)-(x) do not readily apply to his or her occupation.

If 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 he or she 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 evidence indicates that since 2018, the Petitioner has been employed as a research associate with the [redacted] in [redacted], Illinois, receiving an annual salary of approximately $65,000. According to an August 2021 letter from his employer, "[a]s a research associate, [the Petitioner] is responsible for understanding the [redacted] of the [redacted] experiment and development of the algorithms to identify the [redacted] events in [redacted] which can be applied to [redacted] and [redacted] experiments." The Petitioner's curriculum vitae provides that at the [redacted], he "work[s] on [redacted] experiments: [redacted], [redacted], and [redacted]."

A. Evidentiary Criteria

The Director concluded that the Petitioner met the initial evidentiary requirements of presenting documents that satisfied at least three of the ten criteria listed under 8 C.F.R. § 204.5(h)(3)(i)-(x).[2] Specifically, the Director found that the Petitioner offered evidence of his participation as a judge of the work of others, his authorship of scholarly articles in the field in professional publications, and his

[2] The Director concluded that the evidence did not show the Petitioner had received a one-time achievement (that is, a major, internationally recognized award) discussed under 8 C.F.R. § 204.5(h)(3). On appeal, the Petitioner does not challenge this finding.

original scientific contributions of major significance in the field. Thus, the Director determined that the Petitioner satisfied the three criteria under 8 C.F.R. § 204.5(h)(iv)-(vi).

B. Final Merits Determination

Based on the Director's conclusion that the Petitioner has 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 his or her successes are sufficient to demonstrate 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 case, the Petitioner has failed to demonstrate that he has attained the required level of acclaim and recognition in the field. As such, he has not established eligibility for the classification.

While the Petitioner has offered documentation satisfying three of the ten initial evidence criteria, two of these criteria involve activities that appear to be routine among research scientists. The Petitioner's co-authorship of scholarly articles meets the requirements of 8 C.F.R. § 204.5(h)(3)(vi), and his peer review of other scientists' manuscripts constitutes judging the work of others under 8 C.F.R. § 204.5(h)(3)(iv). The Director also concluded that the Petitioner has made original scientific contributions of major significance in the field of [redacted] physics based on his co-authorship of articles associated with large-scale collaborative research projects. However, the Petitioner has not specified the level of his involvement or the significance of his work among hundreds of researchers in these projects.

To establish his standing in the field of [redacted] physics, the Petitioner relies heavily on the field's response, including citations, to his co-authored scholarly articles. The Petitioner offers evidence to show that the number of citations that his work has received is much higher than the average number of citations that an article in the field of physics commonly receives. While the Petitioner's field of [redacted] physics is in the larger field of physics, he has not demonstrated that information extrapolated from the larger field applies equally to each subfield within physics, including [redacted] physics. Thus, the Petitioner's comparison of his citation number in his narrow field with information regarding citation in the larger field of physics does not sufficiently establish the level of his acclaim and recognition in his field of [redacted] physics.

Other evidence in the record similarly fails to demonstrate, by a preponderance of the evidence, that the Petitioner has attained the required level of acclaim and recognition for the classification. According to a January 2022 google scholar printout, he had co-authored 34 articles,[4] and his co-authored work had garnered over 2,000 citations since 2017. The printout indicates that his most cited articles were a 2021 article that had been cited 481 times; his 2015 article that had been cited 223

[3] *See also* 6 *USCIS Policy Manual* F.2(B)(2), https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-2 (stating that U.S. Citizenship and Immigration Services (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).

[4] On his curriculum vitae, the Petitioner lists 56 items under "Publications."

times; his 2020 article that had been cited 148 times; and his 2018 article that had been cited 131 times. His two most cited articles, published in 2021 and 2015, respectively, each had over 200 authors who were affiliated with a multitude of laboratories and universities, and credited the Petitioner as an author affiliated with the University of [redacted] The evidence shows that the articles were associated with large-scale collaborative research projects that the Petitioner was involved in when he was a Doctor of Philosophy (Ph.D.) student at the University of [redacted] His third and fourth most cited work, published in 2020 and 2018, respectively, was also associated with large-scale collaborative research projects that involved hundreds of research scientists. The Petitioner offers reference letters attesting to the importance of these projects, indicating that they had significant impact in the field of [redacted] physics. For example, [redacted], a physicist at [redacted] states in his letter that the Petitioner "is [a] talented researcher whose research at [redacted] has helped expand the limits of [redacted] physics." [redacted], an associate professor in the Department of Physics, University of [redacted] indicates in her letter that the Petitioner "is at the cutting edge of [redacted] physics, particularly in the area of [redacted]"

While the record confirms the importance of these research projects in the field, the evidence, including the reference letters, does not reveal the significance of the Petitioner's contributions in these projects among hundreds of other research scientists. For example, according to the materials in the record concerning the 2015 article, certain authors held the position of research project manager or deputy project manager, signifying their leadership role in the project. According to [redacted] curriculum vitae, he has served as "one of two co-spokespeople," "interim overall analysis coordinator," "co-convener," and "project manager" for these projects. The Petitioner indicates in his curriculum vitae that he "Led the [redacted] working group as [a] co-convener" from August 2018 and November 2019. Neither his curriculum vitae nor other evidence in the record indicates that he has held any other leadership roles for these projects. The Petitioner has not sufficiently explained or established the level of his involvement or the significance of his work in these large-scale collaborative research projects. The Petitioner has also not demonstrated that a large number of scientists in the field recognize him as one of the lead investigators or as an individual who had made major contributions in these projects.

The evidence reveals that articles that the Petitioner had co-authored with fewer scientists have not received the same level of attention in the field as articles that had over 200 co-authors and that were associated with large-scale collaborative research projects. For example, the google scholar printout notes that the Petitioner co-authored with two other scientists an article published in 2015 in the publication *Physical Review D*; that article received 69 citations. The printout also indicates that the Petitioner co-authored with seven other scientists a 2015 article – [redacted] – published in the journal *arXiv*; that article received 7 citations. He co-authored with nine other scientists a 2018 paper – [redacted] – published during the [redacted] International Particle Accelerator Conference; that paper received 3 citations.

The Petitioner has been credited as the first author on a few papers that were published in conferences, such as the 2017 paper [redacted] and the 2018 paper '[redacted]

[redacted]." According to the January 2022 google scholar printout, the 2017 paper received 4 citations and the 2018 paper received no citation.

A number of the Petitioner's references – including [redacted] the Petitioner's supervisor at the [redacted] and [redacted] – indicate that the Petitioner has reviewed manuscripts for one publication and one conference. As relating to his service as a manuscript reviewer, we must evaluate the significance of his experience to determine if such evidence indicates the required level of acclaim and recognition for this highly restrictive classification. *See Kazarian*, 596 F. 3d at 1121-22.[5] The record confirms the Petitioner's participation as a reviewer for a paper associated with the 2019 International Conference on Physics, Mathematics and Statistics (ICPMS2019), and two articles published in the *Journal of Instrumentation* (JINST). The Petitioner has not claimed, and the evidence does not demonstrate, that he has reviewed more than 3 papers. The record is insufficient to confirm that his limited experience as a judge of others' work is indictive of his status as one of the small percentage at the very top of the field of endeavor.

In short, the evidence confirms that the Petitioner was involved in multiple large-scale collaborative research projects, while he was a student at the University of [redacted] and as a research associate at the [redacted] that led to his co-authorship of articles that received notable attention in the field. The Petitioner, however, has not specified his work, his duties, or demonstrated that his level of contributions to these projects that involved hundreds of research scientists supports a finding that he is one of the small percentage of individuals who have risen to the very top of the field. The research and associated articles in which he was a primary contributor have received far lower level of attention and fewer citations. In addition, he has had limited judging experience, reviewing one paper for a conference and two papers for a journal.

Based on the above discussed reasons, we conclude that the record in the aggregate does not support a finding that the Petitioner has achieved sustained national or international acclaim, that he is one of the small percentage at the very top of the field, and that his achievements have been recognized in the field through extensive documentation. *See Kazarian*, 596 F. 3d at 1119-20. Based on this finding, we need not consider the separate question of whether his entry would substantially benefit prospectively the United States.[6]

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. Here, the Petitioner has established that he is an accomplished [redacted] physicist who has been involved in multiple large-scale collaborative research projects that have received notable attention from the field. As his supervisor at the [redacted] indicates in his letter, the Petitioner's "research has helped to revolutionize [the] discipline [of [redacted] physics] to a greater extent than most can claim." However, the record

[5] *See also* 6 *USCIS Policy Manual*, *supra*, at F.2 (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).

[6] *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

does not sufficiently show that his level of 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 eligibility to be classified as an individual of extraordinary ability in the field of [redacted] physics. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.