U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19893950

Date: OCT. 5, 2022

Appeal of Texas Service Center Decision

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

The Petitioner, a cardiovascular researcher, 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 Petitioner had satisfied only two of the ten initial evidentiary criteria, of which he must meet at least three.

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,
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> (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
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> (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 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

Because the Petitioner has not indicated or established that he has received a major, internationally recognized award at 8 C.F.R. § 204.5(h)(3), he must meet at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x).

In denying the petition, the Director determined that the Beneficiary satisfied only two of the initial evidentiary criteria, judging at 8 C.F.R. § 204.5(h)(3)(iv) and scholarly articles at 8 C.F.R. § 204.5(h)(3)(vi). On appeal, the Petitioner maintains his eligibility for an additional criterion. After reviewing all of the presented evidence, the record does not reflect that the Petitioner meets the requirements of at least three criteria.

> *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).

In order to satisfy the regulation at 8 C.F.R. § 204.5(h)(3)(v), a petitioner must establish that not only has he made original contributions but that they have been of major significance in the field.[1] 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.

Although his brief makes various general claims about his research and work, the Petitioner focuses on his paper entitled, [redacted] published in the *European Heart Journal* on behalf of the European Society of Cardiology (ESC). The Petitioner references a letter from [redacted] who stated:

[1] *See* 6 *USCIS Policy Manual* F.2(B)(2), https://www.uscis.gov/policymanual (providing that although funded and published work may be "original," this fact alone is not sufficient to establish that the work is of major significance).

> His paper has already helped in formulation of two international guidelines which outline the worldwide standards for care to be followed in the care of patients. These guidelines include the 2018 guideline on published in the European Heart Journal as well as the 2018 published in the Journal of the American Heart Association. These guidelines form the basis of diagnosis and management of patients with in various conditions. [The Petitioner's] influence on these two major international guidelines from the leading heart associations in the world is huge. This has improved the medical care of patients who suffer from this complication after cardiac surgery and improve patient outcomes after cardiac surgery at our center as well as worldwide.

The Petitioner also cites to other letters commenting on his papers and the guidelines, such as "[p]hysicians and researchers around the world typically refer to these guidelines when making decisions on how to manage care of their patients in their daily practice" and "[t]hese guidelines are considered the best source of information for researchers, cardiologist[s], and cardiac surgeons to best understand these conditions and provide a framework for management of these conditions on an international level"

The record contains the "2018 While the letters indicated the importance of the guidelines in the field, a review of these guidelines do not show that his paper played a significant part or role in its creation. letter indicated that the Petitioner's paper helped in the formulation of guidelines; however, the Petitioner's paper is 1 of 786 other articles cited within the guidelines. Moreover, the Petitioner's paper is not highlighted or distinguished from the other references. Indeed, the guidelines make a single, brief reference to the Petitioner's paper, indicating that [f]urther details on the diagnosis and management of are provided in a recent position paper" without any further elaboration. In the case here, the record does not establish that the Petitioner's paper within the guidelines resulted in a contribution of major significance.[2]

In addition, the letters do not articulate and explain how the Petitioner's paper "has improved the medical care of patients" and "improve[d] patient outcomes." Likewise, the Petitioner references a letter from who generally stated that "through [the Beneficiary's] work in both and , through an important series of publications, he has made major contributions to our understanding of after surgery" without expanding on how the Beneficiary's work has significantly impacted or influenced the field in a major way. In the absence of specific information detailing the impact or influence of the Petitioner's work, the letters do not demonstrate that the work has risen to a level of major significance in the field.

Similarly, the Petitioner indicates that he submitted independent and objective reference letters.[3] For instance, stated that the Beneficiary "appears to be uniquely qualified for a

[2] The record does not contain the "2018 to show both the extent and significance of the Petitioner's contribution to these guidelines.

[3] Although we discuss a sampling of letters, we have reviewed and considered each one.

successful career in academic cardiology" and "[h]is review of [redacted] in the intensive care unit has been most helpful." Here, the lack of specific, detailed information does not show how the Beneficiary's past work has caused contributions of major significance in the field consistent with this regulatory criterion. In addition, while a letter from [redacted] indicated that the Beneficiary's proposed treatment discussed in the position paper resulted in him sending out tests for his patients, the letter does not discuss how it has impacted the overall field rather than limited to his practice.[4]

Here, the letters do not contain specific, detailed information explaining the unusual influence or high impact that the Petitioner's research or work has had in the overall field. Letters that specifically articulate how a petitioner's contributions are of major significance to the field and its impact on subsequent work add value.[5] 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.[6] Moreover, USCIS need not accept primarily conclusory statements. *1756, Inc. v. The U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.C. Dist. 1990).

Furthermore, the Petitioner claims that his paper "was immediately endorsed for use by the American College of Cardiology [ACC]" and "[t]his alone shows the sheer impact on the field of cardiology." Although the Petitioner submitted two postings from ACC's website indicating the publication of the position paper, the screenshots do not support the Petitioner's assertion that ACC immediately endorsed his paper or findings. Again, the postings simply report on the paper's publication and summarize its points; there is no indication that ACC endorsed the paper or that the field considers the resulting research to be a contribution of major significance.

Finally, the Petitioner contends that all of his published works have garnered more than 600 citations. As guidance, examples of original work that constitutes major, significant contributions include, but not limited to, peer-reviewed presentations at academic symposia or peer-reviewed articles in scholarly journals that have provoked widespread commentary or received notice from others working in the field, or entries (particularly a goodly number) in a citation index which cite the individual's work as authoritative in the field.[7] In addition, citatory evidence may contain probative value in corroborating statements in recommendation letters or supporting other documentation in establishing the significance of the contributions. If the Petitioner provides citatory evidence, the burden remains with the Petitioner to show the accuracy, reliability, and relevance of those figures and explain how they demonstrate original contributions of major significance in the field.

However, the Petitioner did not demonstrate how his cumulative number of citations represents contributions of major significance in the field. Moreover, aggregate citation figures tend to reflect a petitioner's overall publication record rather than identifying which published research, if any, the field considers to be majorly significant. Here, the Petitioner does not explain or specify how the number of citations to his individual or particular articles resulted in original contributions of major

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[4] *See* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(2); *see also Visinscaia v. Beers*, 4 F. Supp. 3d at 134-35 (upholding a finding that a ballroom dancer had not met this criterion because she did not corroborate her impact in the field as a whole).
[5] *See* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(2).
[6] *Id. See also Kazarian*, 580 F.3d at 1036, *aff'd in part*, 596 F.3d at 1115 (holding that letters that repeat the regulatory language but do not explain how an individual's contributions have already influenced the field are insufficient to establish original contributions of major significance in the field).
[7] *See* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(2).

significance in the field. Rather, the Petitioner contends that his articles have been published in "prestigious medical journals." The Petitioner did not establish that the publication of articles in highly ranked or popular journals inevitably demonstrates the field considers the research and work to be an original contribution of major significance. Moreover, a publication that bears a high ranking or impact factor reflects the publication's overall citation rate; it does not show an author's influence or the impact of research in the field or that every article published in a "prestigious" journal automatically indicates a contribution of major significance in the field. Publications and presentations are not sufficient under 8 C.F.R. § 204.5(h)(3)(v) absent evidence that they were of "major significance." *See Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009), *aff'd in part*, 596 F.3d 1115.

We note that at initial filing the Petitioner provided citation data from Google Scholar reflecting that his position paper discussed above received 65 citations while two of his most citation papers received 307 and 107 citations, respectively. Again, this criterion requires the Petitioner to establish that he has made original contributions of major significance in the field. Generally, citations can serve as an indication that the field has taken interest in a petitioner's research or written work. However, the Petitioner has not shown that the citation figures for any of his written published articles are commensurate with contributions of major significance. The Petitioner did not articulate the significance or relevance of the citation data. For example, he did not demonstrate that these citations are unusually high in his field or how they compare to other articles that the field recognizes as having been majorly significant. Although this citations indicate that his research and work has received some attention from the field, the Petitioner did not establish that his citation numbers to his individual articles represent majorly significant contributions in the field.

For the reasons discussed above, considered both individually and collectively, the Petitioner has not shown that he has made original contributions of major significance in the field.

III. CONCLUSION

The Petitioner has not submitted the required initial evidence of either a one-time achievement or documents that meet at least three criteria. As a result, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. Accordingly, we reserve this issue.[8]

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 those progressing toward the top. *Price*, 20 I&N Dec. at 954 (Assoc. Comm'r 1994) (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

[8] *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. at 516, n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

EB-1 visas are "reserved for a very small percentage of prospective immigrants"). *See also Hamal v. 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). Here, the Petitioner has not shown that the significance of his work is indicative of the required 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 has garnered national or international acclaim in the field, and he 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 record does not contain sufficient evidence establishing that he is among the upper echelon in his field.

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.