U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22643264

Date: OCT. 25, 2022

Appeal of Texas Service Center Decision

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

The Petitioner, a 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 initially approved the petition. However, the Director subsequently revoked the approval, concluding that the Petitioner had satisfied only two of the 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). The regulation at 8 C.F.R. § 204.5(h)(4) allows a petitioner to submit comparable material if he or she is 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).

With respect to revocations, section 205 of the Act, 8 U.S.C. § 1155, states, in pertinent part, that the Secretary of Homeland Security "may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204."

Regarding revocation on notice, the Board of Immigration Appeals has stated:

> In *Matter of Estime*, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if unexplained and unrebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

Matter of Ho, 19 I&N Dec. 582, 590 (BIA 1988) (citing *Matter of Estime*, 19 I&N Dec. 450 (BIA 1987)).

By itself, the Director's realization that a petition was incorrectly approved is good and sufficient cause for the revocation of the approval of an immigrant petition. *Id.* The approval of a visa petition vests no rights in the beneficiary of the petition, as approval of a visa petition is but a preliminary step in the visa application process. *Id.* at 589. A beneficiary is not, by mere approval of the petition, entitled to an immigrant visa. *Id.*

II. ANALYSIS

The Petitioner is a researcher in the field of [redacted] biology, focusing specifically in the area [redacted] biology. Because he has not indicated or established that he has 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).

In revoking the petition, the Director determined that the Petitioner fulfilled only two of the initial evidentiary criteria; specifically, judging at 8 C.F.R. § 204.5(h)(3)(iv) and scholarly articles at 8 C.F.R. § 204.5(h)(3)(vi), and we agree with that determination.

On appeal, the Petitioner asserts that he meets an additional criterion, discussed below. As the Petitioner claims no other criterion, beyond those discussed herein, we consider the remaining eligibility criteria at 8 C.F.R. § 204.5(h)(3) to be waived. After reviewing all of the evidence in the record, we conclude that the record does not support a finding that the Petitioner satisfies 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 have they made original contributions, but that the contributions 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. *See Visinscaia*, 4 F. Supp. 3d at 134-35.

On appeal, the Petitioner argues that he has made major contributions in the field of microbiology,[2] noting that his research has "pushed researchers understanding" of the effects of [redacted] and [redacted] on human health as well as the characteristics of various diseases and their effect on human health. The Petitioner contends that the publication of his research in reputable journals, along with his citation history and letters of recommendation, establishes that he meets this criterion.[3]

In his brief, the Petitioner claims that his publication in top journals demonstrates that experts in his field find his work to be majorly significant. Specifically, the Petitioner points to the publication of his articles in *Journal of Nutrition*, *Acta Obstrecia et Gynecologica Scandinavica*, *Environmental Health Perspectives*, *Epigenetics*, *Journal of Developmental Origins of Health and Disease*, *Antioxidants and Redox Signaling*, *Emerging Infectious Diseases*, and *Journal of Infectious Diseases*. However, the Petitioner has not established that publication of articles in highly ranked or popular journals inevitably demonstrates that the field considers the research and work to be an original

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

[2] We note that on appeal, the Petitioner refers to his field as [redacted]. In support of the petition, however, the Petitioner claimed to be a researcher in the field of [redacted] biology. The Petitioner must resolve this discrepancy in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

[3] The Petitioner also opines that the Director erred in his decision by incorrectly requiring major contributions "to the field" rather than "in the field" because the regulations do not require a significant important contribution related to the entire field. However, we do not find support for the Petitioner's contention regarding the difference in meaning between these phrases and we note that USCIS policy advises adjudicators to determine "whether the person's original contributions are of major significance to the field." *See* 6 *USCIS Policy Manual, supra*, at F.2 appendix. We therefore conclude that the Director did not err in his decision.

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 on the field or that every article published in a highly ranked journal automatically indicates a contribution of major significance. Here, for the reasons discussed below, the Petitioner has not established that publication in a popular or highly ranked journal alone demonstrates 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.

The Petitioner contends that his published articles had been cited 958 times at the time of filing. The Petitioner did not demonstrate how his cumulative number of citations represents contributions of major significance in the field. As this criterion requires the Petitioner to establish that he has made original contributions of major significance in the field, he bears the burden to identify his original contributions and explain why they are of major significance. Aggregate citation figures tend to reflect a petitioner's overall publication record rather than identifying which research the field considers to be majorly significant.

We note the Petitioner's reference to our non-precedent decision concerning a case where citations to works co-authored by a petitioner were deemed sufficient to demonstrate original contributions of major significance. This decision was not published as a precedent and therefore does not bind U.S. Citizenship and Immigration Services (USCIS) officers in future adjudications. *See* 8 C.F.R. § 103.3(c). Non-precedent decisions apply existing law and policy to the specific facts of the individual case, and may be distinguishable based on the evidence in the record of proceedings, the issues considered, and applicable law and policy. Here, the Petitioner did not submit a copy of the referenced case, nor did it demonstrate that the facts of that case are analogous to the matter currently before us.

The record also reflects that the Petitioner submitted evidence from Google Scholar reflecting that his three highest cited articles received 160 (*Emerging Infectious Diseases*), 135 (*Journal of Infectious Diseases*), and 64 (*Environmental Health Perspectives*) citations, respectively.[4] Once 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 sufficiently shown that the citations for any of his published articles are commensurate with contributions of major significance. The Petitioner did not articulate the significance or relevance of the citations to his articles. 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 views as having been majorly significant. Although his citations are indicative that his research 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.[5]

[4] The Petitioner did not specify how many citations, if any, for each of his individual articles contained self-citations.

[5] *See* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(2) (providing an example that 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, may be probative of the significance of the person's contributions to the field of endeavor).

In addition to the Google Scholar citation evidence, the record contains evidence relating to the "impact factors" of the journals that published the Petitioner's papers. That a publication bears a high ranking or impact factor is reflective of the publication's overall citation rate. It does not, however, demonstrate the influence of any particular author within the field or how an author's research has had an impact within the field. Although a journal's ranking and impact factor can provide an approximation of the prestige of the journal, the ranking does not demonstrate the major significance of every article published in that journal. The Petitioner must establish that the findings in his articles have affected the [redacted] biology field at a level indicative of original contributions of major significance in the field.

The Petitioner also argues that he submitted multiple articles that have been cited at a rate exceeding that at which papers published by other [redacted] biology experts have been cited, and asserts that each article therefore constitutes an original scholarly contribution of major significance. In support of this assertion, the Petitioner submitted data about the rate of citation to his individual papers from several third-party sources. The first set of data the Petitioner refers to is the Altmetric Attention Score. The Petitioner submitted evidence regarding the attention score assigned by Altmetric to eight of his papers, indicating that five of these papers were "in the top 25% of all research outputs scored by Altmetrics," and the remaining three papers received good or above average attention scores. On review of this evidence, it appears that these scores are calculated based on online attention derived from social media and mainstream news media. Altmetric's website states as follows:

> Altmetrics are metrics and qualitative data that are complementary to traditional, citation-based metrics. They can include (but are not limited to) peer reviews on Faculty of 1000, citations on Wikipedia and in public policy documents, discussions on research blogs, mainstream media coverage, bookmarks on reference managers like Mendeley, and mentions on social networks such as Twitter.
>
> Sourced from the Web, altmetrics can tell you a lot about how often journal articles and other scholarly outputs like datasets are discussed and used around the world. [6]

According to its website, excerpts of which are submitted by the Petitioner on appeal, the attention scores reflected in the Altmetric data provided by the Petitioner are garnered by mentions in various social media platforms such as news articles, blogs, Wikipedia, and Twitter. On appeal, the Petitioner argues that the Director erroneously discounted the Altmetric attention scores because they were derived in part from Wikipedia sources. While we acknowledge the Petitioner's assertion that Wikipedia is not the sole source used for score compilation, it nevertheless is highlighted as a significant source of data. As mentioned in the Director's decision, there are no assurances about the reliability of the content from Wikipedia, an open, user-edited internet site.[7] *See Lamilem Badasa v. Michael Mukasey*, 540 F.3d 909 (8th Cir. 2008).

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[6] *See* https://www.altmetric.com/about-altmetrics/what-are-altmetrics/ (last visited Oct. 25, 2022).

[7] Online content from *Wikipedia* is subject to the following general disclaimer, "WIKIPEDIA MAKES NO GUARANTEE OF VALIDITY. *Wikipedia* is an online open-content collaborative encyclopedia; that is, a voluntary association of individuals and groups working to develop a common resource of human knowledge. The structure of the project allows anyone with an Internet connection to alter its content. Please be advised that nothing found here has necessarily been reviewed by people with the expertise required to provide you with complete, accurate or reliable information. That is not

We further note that Altmetric's website states that "[i]t is important to bear in mind that metrics (including citation-based metrics) are merely indicators-they can point to interesting spikes in different types of attention, etc. but are not themselves evidence of such."[8] Moreover, "[t]here are a number of limitations to the use of altmetrics," "altmetrics are a complement to, not a replacement for, things like informed peer review and citation-based metrics," "[a]nyone with enough time on their hands can artificially inflate the altmetrics for their research," and "[u]ntil we know more, use and interpret altmetrics carefully."[9] While the Petitioner asserts that the Altmetric data demonstrates that his articles constitute original contributions of major significance, he does not explain or demonstrate that even very high attention in social media and mainstream news media is indicative of the subject research being of major significance to other scientists conducting [redacted] biology research.

The Petitioner also submitted statistical analyses from Dimensions, indicating that some of his articles have received "more attention than normal," and others are "extremely highly cited," earning between 8.16 and 24 times more citations than average. These figures can be misleading, because the range of citations is broad; the most-cited articles can receive hundreds or thousands of citations, while others are cited once or not at all. Above average is not necessarily synonymous with the top of the field. Although this information provides some context for the citation figures submitted, the record still lacks independent, objective evidence to explain how the Petitioner's contributions are of major significance such that his achievements have been recognized in his field of expertise.

Finally, the Petitioner claims that he presented testimonials attesting to his majorly significant contributions. In general, the letters recount the Petitioner's research and findings, indicate their publications in journals, and point to the citations of his work by others. Although they reflect the novelty of his work, they do not sufficiently articulate how his research and findings have been considered of such importance and how their impact on the field rises to the level of major significance required by this criterion.[10] For instance, [redacted] commented on the Petitioner's research conducted at the [redacted] which focused on the prevalence of different [redacted] infections, development of [redacted] methods for easy identification for identification of different [redacted] species, and immunity to [redacted]. According to [redacted] the Petitioner's work in this area contributed to the limitation of parasitic infection in the United States, and he notes that the Petitioner developed a [redacted] characterization of [redacted] an anerobic parasite." However, [redacted] did not describe how the Petitioner has significantly influenced the field. Similarly, while [redacted] concluded that the Petitioner's work on this project "helped define the scope of the prevalence of this pathogen, so a firm plan of action for addressing it could be developed," he did not supplement his letter with specific examples showing how the Petitioner impacted the field in a significant way.

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to say that you will not find valuable and accurate information in *Wikipedia*; much of the time you will. However, ***Wikipedia* cannot guarantee the validity of the information found here**. The content of any given article may recently have been changed, vandalized, or altered by someone whose opinion does not correspond with the state of knowledge in the relevant fields." (Emphasis in original). *See* http://en.wikipedia.org/wiki/Wikipedia:General_disclaimer (last visited Oct. 25, 2022).

[8] *See* https://www.altmetric.com/about-altmetrics/what-are-altmetrics/ (last visited Oct. 25, 2022).

[9] *See id.*

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

[redacted] commented on the Petitioner's work pertaining to the effects of [redacted] exposure and its [redacted] effects on humans, noting that the Petitioner found that humans exposed to [redacted] may be more likely to develop cancer. Although she states that his findings had been published in *Environmental Health Perspectives* and that she cited his findings in one of her articles, [redacted] does not explain why she cited to this research or how it affected her research. [redacted] also focused on the prestige of the journals in which the Petitioner's work has been published, but she did not explain how his research constitutes an original contribution of major significance to other researchers in the field.

Similarly, [redacted] stated that she is familiar with the Petitioner's work in the field of [redacted] related toxicity and [redacted] modification resulting from [redacted] exposure, and referenced the Petitioner's articles on these subjects that were published in the scientific journals *Environmental Health Perspectives* and *Metallomics*. However, she did not explain how the Petitioner's published findings affected her own research. In addition, in discussing the significance of these contributions, the letter refers to the prestige of the journals in which the Petitioner's work has been published. But we will not assume that all papers published in prestigious scientific journals have impact or influence on their respective fields, and [redacted] does not explain how attention to the Petitioner's research in scientific journals reflects a significant contribution to the field of [redacted] biology.

Furthermore, some of the letters speculate on the potential influence of the Petitioner's work and propose that he will have an impact at some undefined point in the future. For example, [redacted] commented on the Petitioner's research on [redacted] deficiency and supplementation during pregnancy. According to [redacted] the Petitioner's finding that extended [redacted] in [redacted] women who participated in his study led to improved [redacted] and immune function in infants, and showed the benefits of exclusively [redacted] and its potential to lower health care costs in [redacted] and other developing countries. She did not, however, elaborate and explain if the research has ever been applied in the field.

Here, the Petitioner's letters do not contain specific, detailed information explaining the unusual influence or high impact his research or work has had on 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.[11] 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.[12] 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).

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.

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

[12] *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).

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 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 finding that the Petitioner has established the sustained 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 not shown that the significance of his work reflects 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). Although the Petitioner has reviewed manuscripts, conducted research, and authored scholarly articles, 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.

ORDER: The appeal is dismissed.