U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27572282

Date: AUG. 2, 2023

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Exceptional Ability)

The Petitioner, a medical doctor who researches rare diseases, seeks classification under the employment-based, first-preference (EB-1) immigrant visa category as a noncitizen with "extraordinary ability." *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This category requires petitioners to demonstrate sustained national or international acclaim and recognition of their achievements in their fields of expertise through extensive documentation. *Id.*

The Director of the Nebraska Service Center denied the petition. The Director concluded that the Petitioner met two of ten initial evidentiary criteria - one less than required. On appeal, the Petitioner contends that, in her field, the Director overlooked proof of her satisfaction of other evidentiary criteria, including: receipt of national awards for excellence; membership in associations requiring outstanding achievement; and original, scientific contributions of major significance.

The Petitioner bears the burden of demonstrating eligibility for the requested benefit by a preponderance of the evidence. *Matter of Ho,* 19 I&N Dec. 582, 589 (BIA 1988) (citation omitted). Exercising de novo appellate review, *see Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015), we conclude that the Petitioner has demonstrated original, scientific contributions of major significance to her field. We will therefore withdraw the Director's contrary decision. Because the Director did not make a final merits determination as to whether the Petitioner established extraordinary ability in the field, we will also remand the matter for entry of a new decision.[1]

I. LAW

To qualify for the requested immigrant visa category, a petitioner must demonstrate that:

- They have "extraordinary ability in the sciences, arts, education, business, or athletics;"
- They seek to continue work in their field of expertise in the United States; and
- Their work would substantially benefit the country.

[1] We decline the Petitioner's request for oral argument. *See* 8 C.F.R. § 103.3(b)(1), (2). We do not find her personal appearance necessary to resolve this matter.

Section 203(b)(1)(A)(i)-(iii) of the Act.

The term "extraordinary ability" means a level of expertise commensurate with "one of that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). Evidence of extraordinary ability must demonstrate a noncitizen's receipt of either "a major, international recognized award" or satisfaction of at least three of ten lesser evidentiary standards. 8 C.F.R. § 204.5(h)(3). If a petitioner meets either of these initial evidentiary requirements, U.S. Citizenship and Immigration Services (USCIS) then determines whether the record, as a whole, establishes sustained national or international acclaim and recognized achievements that demonstrate a noncitizen's ranking among the small percentage at the very top of their field. *See Kazarian v. USCIS*, 596 F.3d 1115, 1119-20 (9th Cir. 2010) (requiring a two-part analysis of extraordinary ability).

II. ANALYSIS

The Petitioner, an Indian native and citizen, is a licensed physician who works in the United States as a clinical assistant professor at a medical school and a doctor at a hospital. She also independently researches rare diseases lacking treatment protocols. In 2016, she successfully self-petitioned in the employment-based, second-preference (EB-2) immigrant visa category, earning a "national interest" waiver of the category's job-offer requirement. *See* section 203(b)(2)(B)(ii) of the Act.[2]

The Petitioner does not claim - nor does the record indicate - her receipt of a major international award. She must therefore meet at least three of ten lesser evidentiary standards. *See* 8 C.F.R. § 204.5(h)(3).

The Director found that, in the Petitioner's field, she demonstrated her participation as a judge of others' work and as an author of scholarly articles. *See* 8 C.F.R. § 204.5(h)(3)(iv), (vi). She asserts further qualifications in the field as a: recipient of national awards for excellence; member of associations requiring achievements that recognized national or international experts judged to be outstanding; and provider of original contributions of major significance. *See* 8 C.F.R. § 204.5(h)(3)(i), (ii), (v).

Contrary to the Director's decision, we find sufficient evidence of the Petitioner'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). Under this criterion, USCIS first determines whether a petitioner has made original contributions in their field. *See generally* 6 *USCIS Policy Manual* F.(2) App'x, www.uscis.gov/policy-manual. If so, the Agency then considers the contributions' significance. *Id.* Contributions do not necessarily have major significance just because they are original. *Id.* A petitioner must submit evidence of their importance, such as their generation of widespread commentary, notice from others working in the field, or citations. *Id.*

The Petitioner contends that her research on rare diseases constitutes original contributions in her field. She says these contributions have major significance because other clinicians use her research as "de facto guidelines" in treating rare diseases.

[2] Noncitizen physicians may receive national interest waivers in the EB-2 category if: they qualify as members of the professions holding advanced degrees or noncitizens of "exceptional ability;" agree to work full-time as physicians in areas lacking health care professionals or at U.S. veterans hospitals; and federal agencies or state health departments find their proposed work to be "in the public interest." Sections 203(b)(2)(A), (B) of the Act.

The record establishes the Petitioner's original contributions to the field. Evidence shows her discoveries, for example, that [redacted] a previously ignored contaminant, can cause infection and that, [redacted] a cancer medication, causes infection-like symptoms in some patients.

The Director, however, concluded that the Petitioner did not demonstrate that her original contributions have major significance. The Director faulted evidence that her published research articles had been downloaded from the Internet more than 40,000 times. The Director noted that, without evidence of the downloads' purposes, their number does not establish the significance of the Petitioner's work.

The Director acknowledged letters from other physicians praising the Petitioner's original research. But the Director stated: "None of the letters specifically articulate how the petitioner's contributions are of major significance to the field as a whole, nor provide specific analysis of the impact of any contributions on subsequent work." The Director found that the record lacks examples of "real world applications" that benefited from the Petitioner's work and are widely accepted in the field.

The Director, however, overlooked evidence of the significance of the Petitioner's original contributions. We acknowledge that the number of research article downloads was not probative. But she submitted other documentation demonstrating that, since 2017, her 34 published articles have generated more than 120 citations from researchers, including one article with 17 citations. This and other evidence shows that her original research has significance.

Also, letters from other doctors indicate that the importance of the Petitioner's original research is substantial. A German professor of nuclear medicine praised the Petitioner's research on [redacted] and other "contaminants." The professor stated that the Petitioner's treatment protocols for these newly discovered infectants "vastly improve the chances of successful treatment of such rare infections in patients worldwide." The professor also noted that, in discovering [redacted] link to periaortitis, an inflammatory condition typically affecting the abdominal aorta, the Petitioner used PET (positron emission tomography) scans to diagnose inflammation. The professor stated: "These findings help radiologists increase differential diagnosis whenever features of periaortitis are found."

Further, a doctor at [redacted] Hospital stated that the Petitioner's original research on rare diseases "helps prevent misdiagnosis leading to increased healthcare and legal costs." The doctor also stated that the Petitioner's research has proved the efficacy of next-generation DNA (deoxyribonucleic acid) sequencing and PCR (polymerase chain reaction) testing in diagnosing infections from rare pathogens and unusual presentations of common pathogens in hospital settings.

Thus, contrary to the Director's decision, we find that the Petitioner has sufficiently demonstrated original scientific contributions to her field of major significance. Because she meets at least three of the 10 initial evidentiary standards, we need not review the Director's findings regarding her claimed receipt of national awards for excellence in the field and membership in associations requiring outstanding achievements in the field. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies need not make "purely advisory findings" on issues unnecessary to their decisions); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach an alternative appellate issue where an applicant did not otherwise qualify for the requested relief).

The Director did not consider whether the Petitioner has received sustained national or international acclaim and recognition of her achievements sufficient to demonstrate extraordinary ability in her field. Because we decline to make this final merits determination in the first instance, we will remand the matter.

On remand, the Director should review the entire record and determine whether the Petitioner has established herself among the small percentage who have risen to the very top of her field of endeavor. The Director should then enter a new decision.

III. CONCLUSION

The Petitioner met the preliminary evidentiary requirements of the requested immigrant visa category. USCIS must now determine whether she has demonstrated extraordinary ability in her field.

ORDER: The Director's decision is withdrawn. The matter is remanded for entry of a new decision consistent with the foregoing analysis.