U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 24227865

Date: JAN. 18, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a scientist seeks classification as an alien 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 Texas Service Center Director denied the Form I-140, Immigrant Petition for Alien Workers (petition), concluding that the Petitioner did not establish that he had a major, internationally recognized award, nor did he demonstrate that he met at least three of the ten regulatory criteria. The matter is now before us on appeal. The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). We review the questions in this matter *de novo*. *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 203(b)(1) 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,
>
> (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
>
> (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 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.

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

The Petitioner holds a Ph.D. in biomedical sciences from a U.S. university that he earned in 2014, and from 2016 through the time he filed the petition, he has conducted research at the [redacted] as a research fellow in the developmental and cellular biology fields. At the [redacted] a research fellow is one who possesses a doctoral degree and is on a time-limited, renewable appointment. The purpose of the research fellowship is to provide junior-level scientists experience in biomedical research while they provide a service relevant to the institute's or center's program needs. Those with considerable experience beyond postdoctoral training may be designated as senior research fellows. *Research Fellow*, [redacted] Research [redacted] 2022), https://[redacted]research-fellow. The Petitioner indicates in the appeal that he plans to move to a new institute soon after filing the appeal.

Because the Petitioner 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). Before the Director, the Petitioner claimed he met three of the regulatory criteria. The Director decided that the Petitioner satisfied two of the criteria relating to judging and authorship of scholarly articles, but that he had not satisfied the criterion associated with original contributions. We agree with the Director that the record supports the Petitioner's satisfaction of the judging and scholarly articles criteria. On appeal, the Petitioner maintains that they meet the evidentiary criteria relating to contributions of major significance, but after reviewing all the evidence in the record, we do not agree with that assessment.

> *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).

The Petitioner provided articles he authored and their associated citation record, support letters, conference invitations, and job offers. The Director determined that the Petitioner did not meet the requirements of this criterion. On appeal, the Petitioner claims the Director made mistakes and

disregarded evidence he offered under this criterion. Ultimately, we agree with the Director's conclusion that the Petitioner's evidence does not satisfy these requirements here.

The primary requirements here are that the Petitioner's contributions in their field were original and they rise to the level of major significance in the field as a whole, rather than to a project or to an organization. *Amin v. Mayorkas*, 24 F.4th 383, 394 (5th Cir. 2022) (citing *Visinscaia*, 4 F. Supp. 3d at 134. The regulatory phrase "major significance" is not superfluous and, thus, it has some meaning. *Nielsen v. Preap*, 139 S. Ct. 954, 969 (2019) (finding that every word and every provision in a statute is to be given effect and none should needlessly be given an interpretation that causes it to duplicate another provision or to have no consequence). Further, the Petitioner's contributions must have already been realized rather than being potential, future improvements. Contributions of major significance connotes that the Petitioner's work has significantly impacted the field. The Petitioner must submit evidence satisfying all of these elements to meet the plain language requirements of this criterion.

We begin with the letters from those in the Petitioner's field. Within the appeal, the Petitioner identifies two letters that we should consider. The first is from [redacted] a professor at a university in Finland. After reviewing her letter, we agree with the Director that she describes the Petitioner's findings as what appears to be incremental additions to the field's knowledge rather than already realized significant contributions. Essentially, Ms. [redacted] does not explain how the Petitioner's findings have resulted in significant improvements in the field or how they have propelled the field forward.

Next is the letter from an assistant professor at the University of [redacted] While Mr. [redacted] better describes an impact the Petitioner's research has had in the field, his letter also falls short of explaining the significance of those impacts. Although the professor informs us of what the Petitioner's findings have enabled and how others have used them, he does not describe how the expanded use of the Petitioner's findings have affected the field in a significant manner.

As it relates to the letters in the record, even though the Director could have offered more in-depth analysis of the letters, that evidence was at least considered and was found to be inadequate to satisfy the standard under this criterion. It is not erroneous that a U.S. Citizenship and Immigration Services (USCIS) decision does not cite from each and every letter in support of a petition. *Chen v. U.S. Dep't of Justice*, 471 F.3d 315, 338 n.17 (2d Cir. 2006)); *Yan Lan Wu v. Ashcroft*, 393 F.3d 418, 424–25 (3d Cir. 2005); *Morales v. I.N.S.*, 208 F.3d 323, 328 (1st Cir. 2000). Especially where the Director addressed the contents of any claimed letter, they do not have to directly discuss every one of them. *Amin*, 24 F.4th at 394. And on appeal, the Petitioner has not identified any particular letter in which the Director failed to consider its contents that also illustrates his contributions to his broader field are of major significance.

Moving to the publication's stature in which the Petitioner's work was published, the Petitioner claims such achievements are "strong evidence of his research capacity and exceptional contributions in the academic community." What is lacking is the Petitioner's account of how that equates to this criterion's requirements. Simply because publishing in prestigious journals might suggest his research is valuable, does not necessarily mean that his valued research has significantly contributed to the field as a whole. Publications alone are not sufficient under 8 C.F.R. § 204.5(h)(3)(v) absent evidence that

they were of major significance. Here, the Petitioner did not establish that publication in a popular or highly ranked journal alone demonstrates a contribution of major significance in the field.

His arguments regarding the collective or total number of citations to his published work also fails to meet this criterion's requirements. The Petitioner focuses on his total number of citations, but not on any particular single article while also comparing that recognition to other leading articles in his field. In general, the comparison of a petitioner's cumulative citations to those of others in the field in an attempt to draw a conclusion of their comparative impact in the field, is often more appropriate within a final merits determination after they have satisfied at least three regulatory criteria. Such a comparison may assist in determining whether the record shows sustained national or international acclaim and demonstrates that they are among the small percentage at the very top of the field of endeavor.

We view a comparison of citations to individual scientific articles to be more relevant for this criterion in order to establish the overall field's general view of a contribution of major significance. *See generally* 6 *USCIS Policy Manual* F.2 (Appendices), https://www.uscis.gov/policymanual; *see also Visinscaia*, 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). For example, he did not provide the citation rates of other recognized contributions of major significance within the field for comparison purposes. Nor has the Petitioner shown that a notable number of the citing authors placed unusual reliance on his work. The Petitioner also did not establish what an average or high citation rate is within his specialized field.

Even considering all of the Petitioner's appellate claims under this criterion, he has not shown that his work has resulted in a marked impact within the field. In the end, the Petitioner has not submitted evidence that meets the plain language requirements of this criterion.

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 do not need to 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 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 that goal. 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 their 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). Moreover, the record does not otherwise demonstrate that the Petitioner has garnered national or international acclaim in the field, and they are one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) and 8 C.F.R. § 204.5(h)(2).

For the reasons discussed above, the Petitioner has not demonstrated their 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.