U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27437533

Date: JUL. 24, 2023

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (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 denied the petition, concluding that the record did not establish that the Petitioner satisfied the initial evidence requirements for this classification by demonstrating his receipt of a major, internationally recognized award or by submitting evidence to satisfy at least three of the ten evidentiary criteria at 8 C.F.R. § 204.5(h)(3). The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (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

An individual is eligible for the extraordinary ability classification if they have extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and their achievements have been recognized in the field through extensive documentation; they seek to enter the United States to continue work in the area of extraordinary ability; and their entry into the United States will substantially benefit prospectively the United States. Section 203(b)(l)(A) of the Act.

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 may demonstrate international recognition of their achievements in the field through a one-time achievement (that is, a major, internationally recognized award). Absent such an achievement, a petitioner must provide

sufficient qualifying documentation demonstrating that they meet at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

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 claims employment as a postdoctoral researcher in the field of molecular biology at the U.S. Department of Agriculture's [redacted] in [redacted] Illinois. He received his Ph.D. in science from [redacted] University. He indicates his intention to continue his work in the same field in the United States.

A. Evidentiary Criteria

Because the Petitioner has not indicated or established that he has received a major, internationally recognized award, he must show that he satisfies at least three of the ten regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Director determined that the Petitioner submitted evidence related to the criteria at 8 C.F.R. § 204.5(h)(3)(iv), (v), and (vi) and concluded that he satisfied only two criteria. Specifically, the Director concluded that the Petitioner met his burden to demonstrate his service as a judge of the work of others and his authorship of scholarly articles under 8 C.F.R. § 204.5(h)(3)(iv) and (vi). However, the Director determined that the Petitioner did not establish his original contributions of major significance under 8 C.F.R. § 204.5(h)(3)(v).

The record indicates that the Petitioner has judged the work of others in his field by peer reviewing manuscripts for professional journals and that he has authored scholarly articles in professional publications, including *Microbial Biotechnology*, *Biomass Conversion and Biorefinery*, and *Bioresource Technology Reports*. Therefore, we agree with the Director's determination that the Petitioner satisfied the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vi).

On appeal, the Petitioner maintains that he has also made original contributions of major significance at 8 C.F.R. § 204.5(h)(3)(v), and that the Director did not properly weigh the evidence submitted in support of the criterion.[1] We will discuss the evidence submitted in support of this criterion below.

[1] The Petitioner did not claim eligibility under 8 C.F.R. § 204.5(h)(3)(i), (ii), (iii), (vii), (viii), (ix), or (x) before the Director or on appeal. As the Petitioner provides no evidence or arguments addressing these seven criteria on appeal, we consider these issues to be abandoned. *See Matter of R-A-M-*, 25 I&N Dec. 657. 658 n.2 (BIA 2012) (stating that when a filing party fails to appeal an issue addressed in an adverse decision, that issue is waived). *See also Sepulveda v. U.S. Atty. Gen.*, 401 F.3d 1226. 1228 n. 2 (11th Cir. 2005). citing *United States v. Cunningham*, 161 F.3d 1343, 1344 (11th Cir. 1998); *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (finding plaintiffs' claims abandoned as he failed to raise them on appeal to the AAO).

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. For example, a petitioner may show that their 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.

In his personal statements, the Petitioner explained that at [redacted] he is working on the development of novel antimicrobial molecules, most recently phage-based endolysin technology, to target bacterial contamination in biorefineries in a manner that will avoid antimicrobial resistance. He claims that he has made three original contributions of major significance in the field, as evidenced by his published research, citation record, letters from experts in the field, and other evidence. Specifically, he highlighted the following areas of research: (1) using alternatives to antibiotics to control bacterial infection with probiotics; (2) developing novel strain-specific antimicrobials that have a lower chance of promoting resistance; and (3) identifying novel molecules that enhance the effect of present antibiotics.

Although the Petitioner provided evidence reflecting the originality of his research through recommendation letters praising him for his contributions, the authors do not provide specific examples of contributions that are indicative of major significance. In general, the letters recount the Petitioner's research and findings, indicate their publication in journals, point to the citation of his work by others, and comment on their potential and possible future applications, but do not demonstrate that his research has made the required impact in the field.

Two letters from the Petitioner's supervisor at [redacted] discuss his work on antimicrobial peptides for use in the biofuel industry and the development of novel probiotics, and praise his bioinformatic expertise.[2] Specifically, his supervisor states that the Petitioner identified a peptide with significant utility in preventing microbial growth in biorefineries and several novel antimicrobial endolysin genes that show significant potential to control infections. He provides that the Petitioner has identified numerous genes in the genome sequences of refinery contaminants that can potentially be used to produce unique antimicrobial compounds. Further, he "has made significant progress" on the use of a novel pore-forming protein for biorefining contamination control and has collaborated on the development of a yeast surface display system that may be used in biorefineries "in the next few years."

Letters from two colleagues at [redacted] Agricultural Research Services praise his "high technical prowess" in protein purification, chromatography, cell cloning, cell imaging, cell assays, and bioinformatics. They provide that his 2019 article [redacted] regarding a method for mining metagenomics for enzymes to improve conversion of biomass to sugars at a reasonable cost, was featured in a review article published in *Biomass Conversion and Biorefinery*.

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

The Petitioner provided a letter from the director of [redacted] University's Laboratory of Renewable Resources Engineering (LORRE), where he was previously employed as a visiting research associate. The director states that Petitioner made "outstanding contributions" to the process engineering of converting corn stover (cornstalks) to slurries and to sugars that are fermented to ethanol, making "a major step forward" in reducing costs by decreasing the amounts of enzymes required for the conversion steps. He also asserts that the Petitioner's research has "influenced others in his field," and provides that research teams from [redacted] University and [redacted] University have used his research to corroborate their own findings, respectively, on rumen enzymes and increased sheer stress and energy consumption during biomass processing at high load. The letter, however, does not sufficiently detail in what ways the Petitioner has advanced the state of research in his field or elaborated on how the Petitioner's work has already impacted the wider field beyond the teams of researchers who have directly cited his work on these topics. While the record indicates that other researchers have built upon the Petitioner's research, the evidence does not establish that the field views the Petitioner's work as a contribution of major significance.

Although the above letters recount the Petitioner's research and findings and make broad statements regarding their significance in the field, they do not contain sufficient information detailing how his work has been of major significance. In fact, some letters hypothesize on the effect of the Petitioner's research at some undetermined time in the future. For example, in his above letters, the Petitioner's supervisor at [redacted] opined that his work "has provided new key tools" for overcoming antibiotic resistance in industrial processes and "has potential" to develop broad spectrum antimicrobial compounds for use in other medical applications. A letter from the CEO of [redacted] states that the Petitioner's work on the development of novel phage-based antibiotics to be used in biorefineries to overcome the exploitation of current antibiotics holds potential, in the near term, to be available to bioethanol refineries to mitigate contamination.

Here, the letters do not show that the significant nature of his research has already been realized or has been implemented or utilized in a manner consistent with major significance. The letters considered above primarily contain attestations of the novelty and utility of the Petitioner's research studies without describing a specific original contribution that has impacted the broader field of molecular biology, provoked widespread commentary, or had an influence on subsequent work in the specific field.[3] The authors' assertions in the above-referenced letters do not explain how the Petitioner's research findings have been widely implemented in the field or establish that the Petitioner's work has had a demonstrable impact on the field as a whole commensurate with a contribution of major significance.

The Petitioner also submits his publication and citation record from Google Scholar. But this evidence does not show that the impact of his work on the overall field of molecular biology rises to the level of an original contribution of major significance. The fact that the Petitioner has published articles that other researchers have referenced is not, by itself, indicative of a contribution of major significance. Publications are not sufficient under 8 C.F.R. § 204.5(h)(3)(v) absent evidence that they were of "major significance." Rather, the appropriate analysis is to determine whether a petitioner has

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[3] *See generally* 6 *USCIS Policy Manual*, F.2 Appendix, https://www.uscis.gov/policy-manual (providing guidance for the evaluation of evidence submitted under 8 C.F.R. § 204.5(h)(3)(i)-(x) and 204.5(h)(4)).

shown that his findings, factoring in citations and other corroborating evidence, have been considered important at a level consistent with original contributions of major significance in the field. We acknowledge, however, that a petitioner may present evidence that his articles "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 [his] work as authoritative in the field, may be probative of the significance of [his] contributions to the field of endeavor."[4]

The Petitioner also provided evidence from [redacted] showing that two of his articles were ranked among the top 10% (and two others were ranked in the top 20%) when grouped by academic field (in this case, biology and biochemistry),[5] and year of publication. He also submitted a paper published in the journal *Scientometrics* which suggests that this metric is one of three that should be used to evaluate individual researchers in the natural and life sciences for purposes of funding and promotion or hiring decisions.[6] The authors of the paper state that "publications which are among the 10% most cited publications in their subject area are as a rule called highly cited or excellent" and that "the top 10% based excellence indicators" should be given "the highest weight when comparing the scientific performance of single researchers." However, this evidence does not establish that metrics that may be suitable for comparing applicants for academic research positions and grants are indicators that a researcher has made contributions of major significance to his or her field.

Comparative rankings to baseline or average citation rates do not automatically establish that a given petitioner has made a contribution of major significance in the field. A more appropriate analysis, for example, would be to compare the Petitioner's citations for individual articles to other similarly, highly cited articles that the field views as having been of major significance, as well as factoring in other corroborating evidence. Highly cited publications alone are not sufficient under 8 C.F.R. § 204.5(h)(3)(v) absent evidence that they were of "major significance," as a citation ranking does not provide sufficient context to determine the impact or importance of a given researcher's work in the field. We also acknowledge that the Petitioner provided evidence that four of his articles were published in journals with high rankings based on their impact factor. However, a publication's high ranking or impact is reflective of the publication's overall citation rate. It does not demonstrate the influence of any particular author within the field, how an author's research impacted the field, or establish a contribution of major significance in the field. That context must be provided by other evidence in the record.

The Petitioner has not demonstrated, as he asserts, that any of the four articles he characterizes as highly cited resulted in an original contribution of major significance in the field. While the Petitioner submitted corroborating evidence in the form of expert opinion letters, that evidence, for the reasons already discussed, is not sufficient to establish that any of the Petitioner's research findings, individually or collectively, have remarkably impacted or influenced his field.

Further, the Petitioner submitted samples of partial research articles that cited to his work. As discussed, the Petitioner has demonstrated that others have cited to his work in their journal papers.

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[4] *See generally 6 USCIS Policy Manual, supra, at F.2 Appendix.*

[5] Although the Petitioner highlights the field of biology and biochemistry, it appears that the field of molecular biology and genetics may more accurately reflect the Petitioner's work.

[6] On appeal he also submits an additional article, "Measuring the Impact of Your Publications," from Tischlibrary.tufts.edu, which suggests that this metric is one of several that should be used "[w]hen preparing for tenure."

However, the mere citation of work by others does not automatically show "major significance." Here, the partial articles do not reflect the impact of the Petitioner's research in the overall field beyond the authors who cited to his work. For instance, as the Director noted, the Petitioner provided a partial article entitled, '[redacted] (*Nature Reviews Cancer*), in which the authors cite to his 2013 *Journal of Medicinal Chemistry* article.[7] However, the article does not distinguish or highlight the Petitioner's written work from the other cited papers, of which there are more than 140, nor does the article credit his work for being majorly significant.

The submitted research articles reference the Petitioner's work as evidence of recent research, and, while the articles indicate that the authors' own research built upon the Petitioner's work, as well as the work of the other cited scientists, the Petitioner did not demonstrate that the overall field views his published findings as original contributions of major significance. Here, the Petitioner did not show that his published articles through citations rise to a level of "major significance," as required by this regulatory criterion.

The Petitioner also submitted documentation that his publications have been cited in two review articles, and submits a screenshot of a page from the website of the University [redacted] titled [redacted] This evidence indicates that review articles are "an attempt to . . . sum up the current state of the research on a particular topic" and may identify "the main people working in a field" and "recent major advances and discoveries." One of the submitted review articles, titled '[redacted] (*Biomass Conversion and Biorefinery*), cites to the Petitioner's 2019 *International Journal of Biological Macromolecule* article among at least 208 other articles. While the evidence indicates that the Petitioner has made original contributions to what appears to be an active field of research, we cannot determine that every publication cited in a review article is indicative of majorly significant.

On appeal, counsel again references one of our non-precedent decisions concerning a scientific researcher who petitioned under this classification. As noted by the Director, this decision was not published as 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. Nevertheless, we have reviewed the decision although we will not discuss it separately. Counsel emphasizes that the referenced non-precedent decision demonstrates that we have previously determined that "dozens" of citations "are good evidence of a petitioner's contributions of major significance." However, the non-precedent decision also highlights the fact that we placed significant weight on the statements of experts who clearly described how the petitioner's scientific contributions were both original and of major significance in their field. The expert opinion letters submitted in this matter did not contain sufficient probative analysis regarding the major significance of the Petitioner's contributions.

Finally, the Petitioner maintains that his research has been funded by the government of India. Within his response to the Director's request for evidence he submitted documentation that in 2013 his

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[7] Although we discuss a sample article, we have reviewed and considered each one.

proposal for a spore probiotic supplement for farm animals received incubator funding from the "Ministry of MSME." Receiving funding to conduct research is not a contribution of major significance in-and-of itself. Rather, the Petitioner must establish that receiving the grant is reflective of his past work's major significance, or that his research conducted with the grant resulted in a contribution of major significance in the field. The record does not contain any evidence illustrating how the funding reflected the importance of the Petitioner's contributions, or the research results of the Ministry of MSME funding and whether they are majorly significant in the field.

Considered together, the evidence consisting of the citations to the Petitioner's published findings, the citation statistics, and the reference letters from his fellow molecular biologists and other experts, establishes that the Petitioner has been productive, and that his published data and findings have been relied upon by others in their own research. It does not demonstrate that the Petitioner has made a contribution of major significance in the field of molecular biology. Therefore, he has not met 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 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 acclaim and recognition required for the classification sought.

The Petitioner seeks a highly restrictive visa classification. 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 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 that 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 published his work, 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.