U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31672763

Date: JUL. 3, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a postdoctoral research fellow, 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 although the Petitioner satisfied at least three of the required initial evidentiary criteria, he did not show sustained national or international acclaim and demonstrate that he is among the small percentage at the very top of the field of endeavor. 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

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,

(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 sustained acclaim and the recognition of achievements in the field through a one-time achievement (that is, a major, internationally recognized award) or qualifying documentation that meets at least three of the ten categories 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 filed this petition in August 2023. He is presently engaged as a postdoctoral research fellow in a biomedical engineering laboratory at a university located in Maryland and intends to continue pursuing his career there. In a personal statement submitted in response to the Director's request for evidence (RFE) he indicated that he conducts "[r]esearch in the field of optical technology, encompassing areas such as optical imaging, measurement, and calibration." In 2019, he obtained a Ph.D. in the field from a university abroad.

Because the Petitioner has not claimed or established that he has received a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria C.F.R. § 204.5(h)(3)(i)-(x). The Director determined that the Petitioner met three of those criteria: judging under 8 C.F.R. § 204.5(h)(3)(iv), scientific accomplishments of major significance under 8 C.F.R. § 204.5(h)(3)(v), and scholarly articles under 8 C.F.R. § 204.5(h)(3)(vi). Before the Director and on appeal the Petitioner does not assert, nor does the record establish that he has met other criteria.

The Director denied the petition, concluding the record did not show he warranted favorable consideration in a final merits determination based on the totality of the evidence. As the Petitioner has submitted the requisite initial evidence, we will evaluate whether he has demonstrated, by a preponderance of the evidence, his sustained national or international acclaim and that he is one of the small percentage at the very top of the field of endeavor, and that his achievements have been recognized in the field through extensive documentation. In a final merits determination, we analyze a petitioner's accomplishments and weigh the totality of the evidence to determine if his successes are sufficient to demonstrate that he has extraordinary ability in the field of endeavor. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *Kazarian*, 596 F.3d at 1119–20). *See generally* 6 *USCIS Policy Manual* B.2, https://www.uscis.gov/policymanual (stating that USCIS officers should then evaluate the evidence together when considering the petition in its entirety to determine if the petitioner has established by a preponderance of the evidence the required high level of expertise of

the immigrant classification). In this matter, we determine that the Petitioner has not shown his eligibility.

On appeal, the Petitioner argues the Director's decision "presented a nonspecific, boilerplate disclaimer that the [final merits determination] was based on the 'totality of the record,' the structure of the final merits determination suggests otherwise." The Petitioner alleges that because the Director organized his final merits discussion of the evidence in a sequential order similar to when he reviewed the evidence to determine that he met the plain language of three criteria, that he erred by "isolat[ing] evidence related to [each] particular section" and did not collectively consider the evidence in determining that he did not meet the regulatory definitions for extraordinary ability at 8 C.F.R. § 204.5(h)(2), (3). Specifically, the Petitioner contends the Director failed to correctly analyze the evidence, including his testimonial letters, publication record, citation history, notable citations by others, inventions, research funding, his academic and experiential credentials, and his peer review of the work of others.

We have reviewed the Petitioner's initial submission, his response and additional documentation from the Director's request for evidence (RFE), the Director's decision, the Petitioner's appeal brief and supporting documentation about his employer, and the process by which peer reviewers are selected by certain journals to review the work of others. We do not concur with the Petitioner's contentions, and we adopt and affirm the Director's decision. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting that the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted the issue"); *Chen v. INS*, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight circuit courts in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration " to the case). Here, the decision reflects the Director thoroughly reviewed the record and correctly and sufficiently articulated reasons why the Petitioner's evidence and assertions of eligibility fell short in demonstrating that he meets the requirements for classification as an individual with extraordinary ability in the sciences.

For example, relating to the Petitioner's authorship of scholarly articles in the final merits determination, an evaluation of the citations of others to a petitioner's published work can be relevant to the final merits determination of whether a petitioner is at the very top of their field of endeavor. *See Kazarian*, 596 F. 3d at 1121-22.[1] In evaluating this evidence, the Director acknowledged that the Petitioner had published articles in the field of biomedical imaging and medical science, from 2017 thru 2022, and took note of the Petitioner's assertion that his published work count in 2020 and 2022 reached the level of extraordinary ability, as compared to others in the field. However, he concluded that the Petitioner's citation volume was not indicative of his claimed extraordinary ability, or that he has risen to the top of the field.

The Director observed that the highest cited articles provided through the Petitioner's evidence occurred prior to receiving his Ph.D. in 2019. The Director also noticed, based on their review of the

[1] *See also* 6 *USCIS Policy Manual*, *supra*, at F.2 (noting that a petitioner may provide evidence that their total rate of citation to their body of published work is high relative to others in the field such as the person has a high h-index for the field. Depending on the field and comparative data, such evidence may indicate a person's overall standing for the purpose of demonstrating that the person is among the small percentage at the top of the field and enjoys sustained national or international acclaim).

articles published by the Petitioner, that for the year 2022, the Petitioner had a current citation count of zero across all publications, with the highest publication from the 2020 article, [redacted] published in *Optics & Laser Technology* [redacted] 2020. With his last publication in 2022, the Petitioner had an h-index of 8 in that year. The Director explained that the biomedical imaging and medical researchers at the top of the field, and citation count leaders had over 90,000 and 70,000 citations of their work, and h-index ratings in the 70's, 60's and 30's, with multiple articles published in the years of 2022 and 2023 that had 1,000's of citations. The h-index in the field shows the activeness of the researcher and the importance of the research to the field, or community of publications listed in the category of publications, such as the Petitioner's field of biomedical imaging. *See Hirsch, J, An Index to Quantify an Individual's Scientific Research Output*, Proceedings of the National Academy of Sciences of the United States of America, Vol. 102, Iss. 46, p. 16569 (2005). Based in part on this analysis, the Director concluded that the Petitioner's record of citation did not substantiate of his assertion that his published works in 2020 and 2022 reached the level of extraordinary ability, as compared to others in the field. *Chawathe*, 25 I&N Dec. at 376.

On appeal, the Petitioner takes issue with the Director's observation that the Petitioner's most cited articles were published before he obtained his Ph.D., noting that Dr. Albert Einstein's "seminal paper on special relativity was published in 1905, prior to the awarding of his doctorate in 1906." He further asserts "there is no educational requirement for the [extraordinary ability] classification," contending that by making this observation the Director "would arbitrarily impose such a standard." In support of this assertion he cites to *Buletini v. INS*, 850 F. Supp. 1222 (E.D. Mich. 1994). In contrast to the broad precedential authority of the case law of a United States circuit court, we are not bound to follow the published decision of a United States district court in matters arising even within the same district. *See K-S-*, 20 I&N Dec. at 719-20. Although the reasoning underlying a district judge's decision will be given due consideration when it is properly before us, the analysis does not have to be followed as a matter of law. *Id.* For the sake of brevity, we will not analyze or discuss why the holdings in *Buletini* do not support the Petitioner's arguments. In matters like this one, where USCIS has provided a reasoned consideration to the petition, and has made adequate findings, it will not be required to specifically address each claim the Petitioner makes. Guaman-Loja v. Holder, 707 F.3d 119, 123 (1st Cir. 2013) (citing Martinez v. INS, 970 F.2d 973, 976 (1st Cir.1992); see also Kazemzadeh v. U.S. Atty. Gen., 577 F.3d 1341, 1351 (11th Cir. 2009); Casalena v. U.S. INS, 984 F.2d 105, 107 (4th Cir. 1993).

We disagree that the Director improperly imposed an educational requirement within their final merits determination analysis of this aspect of the Petitioner's evidence. Rather, the Director analyzed the Petitioner's published work from 2017 through 2022 within the context of the Petitioner's academic and experiential credentials as presented through the evidence, noting, among other things, that his most cited works were published when he was a doctoral student, that during 2022 he had a zero citation count across all publications, and that his h-index in 2022 and 2023 was 8, while other researchers in his field had h-index ratings that far exceeded his within the same time period - having published articles that garnered 1,000s of citations. The Petitioner asserts on appeal that his "publication and citation record show that he has extraordinary ability in the field of optics, [and] he is one of the small percentage of scientists who have risen to the top of his field." He reiterates the same or similar arguments on appeal that the Director considered in denying the petition, but he does not adequately explain how the Director erred in their analysis of the Petitioner's citation record. We

conclude the Petitioner did not submit evidence sufficient to show that his authorships and overall publication record favorably compares to others who are viewed to be at the very top of the field. *See* H.R. Rep. No. 101-723 at 59, section 203(b)(1)(A)(i) of the Act, and 8 C.F.R. § 204.5(h)(3).

Based on our review of the evidence and the Director's decision we conclude that the Director thoroughly examined and considered the submitted documentation; he discussed various aspects of the evidence individually, but collectively considered the entire record to ultimately determine that the Petitioner is not an individual of extraordinary ability. To determine whether a petitioner has established eligibility for a requested benefit by a preponderance of the evidence, USCIS must examine each piece of evidence - both individually and within the context of the entire record - for relevance, probative value, and credibility. *Matter of Chawathe, supra.* While the Petitioner may disagree with aspects of the Director's analysis of the evidence, he has not sufficiently demonstrated that the Director neglected to collectively consider the record under the preponderance of the evidence standard, or that he otherwise erred as a matter of law or policy in denying the petition.

III. CONCLUSION

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. *Matter of Price*, 20 I&N Dec. 953, 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), *aff'd*, 2023 WL 1156801 (D.C. Cir. Jan. 31, 2023) (determining that 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 his work is indicative of the required sustained national or international acclaim or 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. The record does not contain sufficient evidence establishing the Petitioner among the upper echelon in his field. The Petitioner has not demonstrated his eligibility as an individual of extraordinary ability.

ORDER: The appeal is dismissed.