U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF K-A

DATE: APR. 30, 2018

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a cardiologist, seeks classification as an individual of extraordinary ability in the sciences. *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 Form I-140, Immigrant Petition for Alien Worker, concluding that the Petitioner had satisfied only two of the ten initial evidentiary criteria, of which he must meet at least three.

On appeal, the Petitioner submits additional evidence and contends that he meets five criteria.

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 two options for satisfying this classification's initial evidence

requirements. First, a petitioner can demonstrate a one-time achievement (that is a major, internationally recognized award). Alternatively, he or she must provide documentation that meets at least three of the ten categories of evidence listed at 8 C.F.R. § 204.5(h)(3)(i)-(x) (including items such as awards, memberships, and published material in certain media).

Satisfaction of at least three criteria, however, does not, in and of itself, establish eligibility for this classification. *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), *aff'd*, 683 F.3d. 1030 (9th Cir. 2012); *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (holding that the "truth is to be determined not by the quantity of evidence alone but by its quality" and that U.S. Citizenship and Immigration Services (USCIS) examines "each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true"). Accordingly, where a petitioner submits qualifying evidence under at least three criteria, we will determine whether the totality of 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. 8 C.F.R. § 204.5(h)(2)-(3).

II. ANALYSIS

The Petitioner is a cardiologist employed at [redacted] and a clinical assistant professor of medicine at [redacted] University's medical school. As he has not 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).

A. Evidentiary Criteria

The Director found that the Petitioner met the judging criterion at 8 C.F.R. § 204.5(h)(3)(iv) and the authorship of scholarly articles criterion at 8 C.F.R. § 204.5(h)(3)(vi). We find that the evidence in the record sufficiently supports these conclusions based on his work as a peer reviewer and his authorship of scholarly articles. The Director concluded that the Petitioner had established that his role as a postdoctoral fellow at the [redacted] University's medical school constituted a critical role under 8 C.F.R. § 204.5(h)(3)(viii). The Director quoted [redacted] Professor of [redacted] who asserts that the Petitioner "is the only postdoctoral fellow who can perform echocardiogram in animals such as mice and rabbits," which is a research capability "needed in the field of sudden cardiac death" according to [redacted] The Director concluded, however, that the record did not establish this as a role for an organization with a distinguished reputation.

On appeal, the Petitioner cites the evidence in the record regarding the [redacted] reputation as an integral research component of [redacted] University's medical school, an Ivy League institution,

including its highly regarded publication record, funding, and international reputation. We conclude that this evidence establishes that the Petitioner meets the critical role criterion, due to this distinguished reputation as well as the documentation in the record regarding the Petitioner's expertise in performing echocardiograms on rodents and the key effect this has in the field of research. Because the Petitioner has met three of the initial evidentiary criteria, as required, we will discuss the remaining documentation in the context of a final merits determination.[1]

B. Final Merits Determination

As the record satisfies at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), we will analyze the 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. We evaluate whether he has demonstrated, by a preponderance of the evidence, that he has sustained national or international acclaim and that his achievements have been recognized in the field through extensive documentation, making him one of the small percentage who have risen to the very top of the field of endeavor. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20. Here, the Petitioner has not shown his eligibility for this classification.

The Petitioner is a cardiologist employed by University, however it is unclear whether this position is full-time because he is also a member of the staff. He received his bachelor of medicine and bachelor of surgery degree from the in India, in 2010. The Petitioner was a resident physician at Hospital and a clinical fellow in medicine at from 2012 to 2015. In 2015, he served as an attending physician of the within In 2016, he became a postdoctoral fellow for the within University. In 2017, he was promoted to the position of clinical assistant professor of medicine at University's medical school.

As mentioned above, the Petitioner has reviewed manuscripts, authored scholarly articles, and performed a critical role for an organization that has a distinguished reputation. However, the Petitioner has not demonstrated that his achievements are reflective of a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990).

Regarding the Petitioner's participation as a judge of others' work under 8 C.F.R. § 204.5(h)(3)(iv), an evaluation of the significance of his judging experience is sanctioned under *Kazarian*, 596 F. 3d at 1121, to determine if such evidence is indicative of the extraordinary ability required for this highly restrictive classification. Participation in the peer review process does not automatically demonstrate that an individual has sustained national or international acclaim at the very top of his

[1] On appeal, the Petitioner maintains that he also meets the criteria relating to published material at 8 C.F.R. § 204.5(h)(3)(iii) and contributions of major significance at 8 C.F.R. § 204.5(h)(3)(v). We will consider the evidence relating to these criteria in our final merits determination.

field. Here, the Petitioner indicates that he has recently been appointed as a member of the editorial board for the [redacted] but the list of the editorial board members is dated September 2017, after the filing of the petition. The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1). The record also reflects that the Petitioner conducts peer reviews in the [redacted] but he has not indicated how this peer review experience places him among that small percentage at the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2).

With respect to his scholarly articles under 8 C.F.R. § 204.5(h)(3)(vi), the Petitioner has authored 12. The Petitioner has not demonstrated how this publication record compares with others in the field to demonstrate that he has risen to the top of the field or that this is consistent with sustained national or international acclaim. 8 C.F.R. § 204.5(h)(2)-(3).

While the Petitioner established that he has performed a critical role under 8 C.F.R. § 204.5(h)(3)(viii) within the [redacted] at [redacted] University's medical school, an organization with a distinguished reputation, the record does not demonstrate how this amounts to sustained national or international acclaim or places him at the very top of his field. On appeal, the Petitioner also provides evidence to establish the distinguished reputation of [redacted] and his role there, but the record does not demonstrate that the Petitioner's position as attending physician of the [redacted] equates to experience at a level commensurate with the classification sought.

As evidence of published material about the alien in professional publications under 8 C.F.R. § 204.5(h)(3)(iii), the Petitioner cites the media coverage of the Petitioner's work published in [redacted] and [redacted] The article in the [redacted] contains a photograph of the Petitioner and another physician with a caption stating that they are standing in front of a research poster they presented at the [redacted] conference for 2012. The poster discussed the "demographic and racial variations in patients with out-of-hospital cardiac arrests for the year 2012-2013 based on the National Inpatient Sample database." We find that this caption is not directly about the Petitioner and the record does not indicate that there is an article in this journal about him. The article published in the [redacted] describes the study by the Petitioner and his colleagues regarding racial differences and out-of-hospital cardiac arrests, but this article does not demonstrate that he has received acclaim for his work in the field. While the Petitioner submits evidence of the readership of these publications, we find that this media coverage is not about him and it does not establish that he has sustained national or international acclaim in the field.

With respect to the Petitioner's original scientific contributions in the field under 8 C.F.R. § 204.5(h)(3)(v), the Director concluded that although the record demonstrated the Petitioner had provided original scientific contributions within the field of endeavor, the record did not establish that these were contributions of major significance. As authoring scholarly articles is inherent to

researchers, the citation history or other evidence of the influence of the Petitioner's articles is an important indicator of the significance and recognition that his work has had on the field and whether such influence has been sustained. The record does not contain evidence demonstrating how his citation count compares to others in the field or how his overall publications amount to contributions of major significance.

On appeal, the Petitioner states that his appointment to the editorial board of the [redacted] and as clinical assistant professor at [redacted] University's medical school meet this criterion. As indicated above, the Petitioner's appointment to this editorial board appears to have occurred after the priority date and does not establish eligibility. *See* 8 C.F.R. § 103.2(b)(1). While the Petitioner's appointment at [redacted] University's medical school is indicative of the success the Petitioner has attained in his field, we find that the record does not demonstrate the level of sustained acclaim that is required for this classification. In addition, the record lacks evidence of how the Petitioner's study on whether there is a correlation between racial differences and cardiac arrest amounts to a contribution of major significance in the field. The Petitioner has not shown how this study has influenced others in the field or otherwise furthered the field in a major way. Therefore, we find the record has not sufficiently demonstrated that the Petitioner has sustained national or international acclaim and is among the small percentage at the top of his field. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2)-(3).

III. CONCLUSION

For the reasons discussed above, the Petitioner has not established eligibility as an individual of extraordinary ability under section 203(b)(1)(A) of the Act.

ORDER: The appeal is dismissed.

Cite as *Matter of K-A-*, ID# 1152666 (AAO Apr. 30, 2018)