U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF L-D-B-

DATE: AUG. 22, 2017

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a data science researcher, 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 Nebraska Service Center denied the petition, concluding that although the Petitioner satisfied four of the regulatory criteria, of which she has to meet at least three, she did not show sustained national or international acclaim and demonstrate that she is among the small percentage at the very top of the field of endeavor.

On appeal, the Petitioner submits an additional document and a brief, arguing that she has sustained the required acclaim and has risen to the very top of her field.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 203(b)(1)(A) of the Act makes visas available to qualified 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). Alternately, he or she must provide 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). This two-step analysis is consistent with our holding that the "truth is to be determined not by the quantity of evidence alone but by its quality," as well as the principle that we examine "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." *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

II. ANALYSIS

The Petitioner is a research data scientist with the company [redacted] As the Petitioner has not indicated or established that she has received a major, internationally recognized award, she 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 following four criteria: judging under 8 C.F.R. § 204.5(h)(3)(iv), original contributions under 8 C.F.R. § 204.5(h)(3)(v), scholarly articles under 8 C.F.R. § 204.5(h)(3)(vi), and high salary under 8 C.F.R. § 204.5(h)(3)(ix). The Petitioner's documentary evidence indicates that she has edited manuscripts for several journals, authored articles that have appeared in professional publications, and earns a high salary at her current employer. Accordingly, the Petitioner has satisfied three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3). Although we find the record does not support the Director's determination that she has made original contributions of major significance in the field, we will evaluate the totality of her documentary evidence in the context of the final merits determination below.

B. Final Merits Determination

As the Petitioner has submitted the requisite initial evidence, we will evaluate whether the Petitioner has demonstrated, by a preponderance of the evidence, that she has sustained national or

international acclaim and is one of the small percentage at the very top of the field of endeavor, and that her 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 her successes are sufficient to demonstrate that she 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); *see also Kazarian*, 596 F.3d at 1119-20. In this matter, we determine that the Petitioner has not shown her eligibility.

The record indicates that the Petitioner received a bachelor of engineering at (India) in 2003, a master of science at (Germany) in 2005, and a doctor of philosophy at (the Netherlands) in 2009. Early in her career, the Petitioner held research assistant positions at various educational institutions in which she attended. Later, she worked as a post-doctoral research scientist at the Currently, the Petitioner is a research data scientist at As mentioned above, the Petitioner has reviewed manuscripts, authored scholarly articles, and commands a high salary. The Petitioner has not demonstrated that her achievements, however, 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 work as the judge of others, an evaluation of the significance of her judging experience is sanctioned under *Kazarian,* 596 F. 3d at 1121-11, to determine if such evidence is indicative of the extraordinary ability required for this highly restrictive classification. The Petitioner argues that she has completed peer reviews for the most significant venues in her field and more reviews for the top ranked journals than the vast majority of her peers, separating her from individuals doing routine work. She provided emails and letters showing that she conducted approximately 20 reviews of manuscripts and papers for publication in journals and presentation at conferences. Specifically, the evidence reflects that the Petitioner reviewed four manuscripts for three of the publications and 14 papers for conferences. In addition, the Petitioner reviewed two papers for presentation at the

The Petitioner, however, did not establish that her manuscript and paper review reflects the required sustained national or international acclaim. *See* section 203(b)(1)(A) of the Act. Although the Petitioner established that the publications were in the top five for automation and control theory, transportation, and automatic engineering, she only conducted four manuscript reviews, one in 2008, one in 2015, and two in 2016. In addition, the majority of her reviews were for conferences in 2008 and 2016. In fact, 13 of her 20 documented overall reviews were for the same two

[1] The Petitioner's curriculum vitae does not document her professional or academic research experience in her field between October 2011 and June 2015.

[2] While the Petitioner provided recommendation letters that mention her judging capability, they make no claim that her judging experience is commensurate with "a level of expertise indicating that the individual is 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).

conferences.[3] Further, her evidence indicates that while she performed two journal reviews and seven paper reviews for two conferences in 2016 and one journal review in 2015, her next most recent evaluations occurred in 2008, one for a journal and seven for a conference, and then in 2007 and 2006 for conferences. She did not show any reviews from 2009 to 2014.[4] In summary, the Petitioner documented that she reviewed manuscripts for three journals and papers for five conferences, which she has not established is reflective of a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. at 59.

The Petitioner submits screenshots from indicating that she conducted 31 reviews. The screenshots, however, do not list or indicate the papers or manuscripts confirming her evaluations and accounting for the other 11 reviews, and they do not state the number of reviewers in the pool. In addition, the screenshots also state that "automatically adds review records for about 40 journals . . . with more than 800 journals and 400,000 profiles to date," but "[u]sers can manually add reviews submitted to non- journals, with a verification method planned to be introduced later." Thus, even though the Petitioner indicates that her 31 reviews from shows that she is in the percentile, she has not verified the accuracy of the 31 reviews reflected in given that she presented other evidence documenting 20 reviews and can manually input unverified data. In addition, she has not shown how many other reviewers were in her field to place her in the percentile[5] and the information only relates to those who utilize Accordingly, the significant gaps in her judging experience, as well as the number of journals and conferences, are not reflective of "sustained" acclaim. *See* section 203(b)(1)(A)(i) of the Act.

Furthermore, in many scientific and academic fields, peer review is a routine element of the process by which books and articles are selected for publication or for presentation at conferences. Participation in the peer review process does not automatically demonstrate that an individual has sustained national or international acclaim at the very top of her field. Without evidence that sets her apart from others in her field, such as evidence that she has a consistent history of completing a substantial number of review requests relative to others, served in an editorial position for a distinguished journal or publication, or chaired a technical committee for a reputable conference,[6] the Petitioner has not established her peer review experience places her among that small percentage at the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2).

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[3] The Petitioner reviewed six papers for presentation at the 2016 , and a letter from chair at the 2008 indicates that the Petitioner reviewed approximately seven papers for that conference.

[4] The information she provided to appears to confirm the lack of any review from 2009 to 2014.

[5] Comparing an individual's ranking to a small pool of reviewers may be less accurate than to a larger pool of reviewers.

[6] Although the Director indicated in his decision that the Petitioner participated as a committee chair at the 2008 the record does not support that finding. Instead, the letter from stated that the Petitioner was a committee member and peer reviewer. In addition, the Petitioner provided a screenshot from the symposium's website that lists her as 1 of at least 37 committee reviewers. The Petitioner does not claim, nor does the record reflect, that she chaired a conference or symposium committee.

With regard to her authorship of scholarly articles, the Petitioner presented evidence showing that she authored four papers in professional journals, one book chapter, and ten papers presented at conferences. The Petitioner has not provided sufficient documentation to establish that this publication record is consistent with being among the small percentage at the top of the field or having a "career of acclaimed work." H.R. Rep. No. at 59. In addition, as the Petitioner has not published any scholarly work since 2013, she has not shown that her publications reflect the required sustained national or international acclaim.[7] *See* section 203(b)(1)(A) of the Act. The commentary for the proposed regulations implementing section 203(b)(1)(A)(i) of the Act provide that the "intent of Congress that a very high standard be set for aliens of extraordinary ability is reflected in this regulation by requiring the petitioner to present more extensive documentation than that required" for lesser classifications. 56 Fed. Reg. 30703, 30704 (July 5, 1991). The Petitioner contends that while she left academia in 2011, thereby suggesting the reason for her lack of recent publications, she maintained a level of recognition as demonstrated by her high salary at [redacted] Even if we were persuaded by the Petitioner's argument, she did not show that, for the period that she was active in academia, her publication record placed her among the small percentage at the top of her field.

As authoring scholarly articles is often inherent to the work of scientists and researchers, the citation history or other evidence of the influence of her articles is an important indicator to determine the impact and recognition that her work has had on the field and whether such influence has been sustained. For example, numerous independent citations for an article authored by the Petitioner would provide solid evidence that her work has been recognized and that other researchers have been influenced by her work. Such an analysis at the final merits determination stage is appropriate pursuant to *Kazarian,* 596 F. 3d at 1122. Here, the Petitioner offered evidence that her 2011 journal article has been cited 85 times. Her next two highest articles, published in 2007 and 2008, have been cited 44 and 34 times respectively. In addition, her two most recent articles, published in 2012 and 2013, have been cited 4 and 25 times respectively. She did not establish, however, that such rates of citation are sufficient to demonstrate a level of interest in her field commensurate with sustained national or international acclaim.

On appeal, the Petitioner contends that the Director erred by comparing her citation rates to those of her references, whose citations number in the thousands, and she submits evidence that one of her articles was in the top 1% of most cited articles in her field for the year 2011 and three others placed in the top 10% for 2007, 2008, and 2012, respectively. She states that she therefore has "four papers that objectively fall within a range of citations that bibliometrics research suggests should be considered highly cited or excellent." However, the record does not demonstrate that having four papers in such a range places the Petitioner among the small percentage at the very top of her field or demonstrates sustained national or international acclaim. 8 C.F.R. § 204.5(h)(2); section 203(b)(1)(A) of the Act.

[7] The record indicates that she published one article in 2013, a book chapter and an article in 2012, one article in 2010 and 2011, one article and three conference papers in 2009, four conference papers in 2008, and one conference paper in 2006 and 2007.

Further, while citations are not the only way to gauge the importance or recognition of an individual's work, the record does not otherwise demonstrate that the Petitioner's work has been considered significant and garnered acclaim in the field. The Petitioner presented six recommendation letters that discuss the Petitioner's earlier work in traffic management and intelligent vehicles. The authors indicate that the Petitioner's work has been "a true breakthrough," which has been demonstrated through the publication of her work in scientific journals and presentation at conferences that has been discussed and analyzed above.

Although the letters praise the Petitioner for her development of models and simulations, they do not show how her contributions have been widely implemented or utilized in the field, reflecting that her original contributions have been of major significance and have garnered attention at a level among that small percentage at the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2). For instance, the authors discuss the Petitioner's work in theoretical terms rather than actual or demonstrated situations. faculty research associate at the stated that the Petitioner's techniques aid transportation officials in identifying immediate and efficient re-routes in a catastrophic situation where one route is unsafe to drive. However, did not provide examples of these techniques having been applied in the field. In addition, associate professor at in China, maintained that the automated highway systems reduce costs, spur more efficient fuel consumption, provide safer conditions, and reduce overall travel times. Likewise, did not claim that the Petitioner's work has in fact resulted in any of these positive changes for automated highway systems.

The record also contains a letter from CEO of who indicated that the Petitioner "is constantly developing new model-driven approaches to optimize the automatic control of network traffic." As an example, discussed the Petitioner's assistance in a model-based optimization for ' ' a tool that allows customers to optimize the content offsite and offline on social networks. also stated that ' was selected to be introduced at the conference in 2016, and the Petitioner offered screenshots promoting ' ' reflecting that it is "[a]lready trusted by many publishers," such as Even though it appears that the Petitioner has made significant contributions to she did show how they are of major significance to the field. She did not, for instance, submit evidence demonstrating that she has been recognized or garnered attention for her work on ' '

As noted previously, the Petitioner established that she has commanded a high salary with her current employer, The Petitioner commenced employment with in July 2015, approximately one year prior to the filing of the petition. As indicated above, from 2003 to 2011, the Petitioner previously held research assistant positions at various educational institutions in which she attended and worked as a post-doctoral research scientist at the Here, the Petitioner has not shown that she has consistently commanded a high salary but instead that she only recently earned a high salary based on her employment with The submission of her latest salary is not reflective of a "career of acclaimed work in the field" as contemplated by

Congress and indicative of sustained national or international acclaim. *See* section 203(b)(1)(A) of the Act; H.R. Rep. No. at 59.

Finally, the Petitioner contends that while there may not be an individual regulatory criterion that sufficiently establishes her extraordinary ability, all of the evidence should be collectively considered to determine her eligibility. In this case, the Petitioner has reviewed manuscripts, authored scholarly articles, and commands a high salary. 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 the top. U.S. Citizenship and Immigration Services 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). While the Petitioner need not establish that there is no one more accomplished than her to qualify for the classification sought, we find the record insufficient to demonstrate that she has sustained national or international acclaim and is among the small percentage at the top of her field. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2).

III. CONCLUSION

For the reasons discussed above, the Petitioner has not established eligibility as an individual of extraordinary ability.

ORDER: The appeal is dismissed.

Cite as *Matter of L-D-B-*, ID# 451559 (AAO Aug. 22, 2017)