U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF J-V-R-

DATE: DEC. 11, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a physiology 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 Acting Director of the Nebraska 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 she must meet at least three.

On appeal, the Petitioner submits additional documentation and a brief, arguing that she meets at least three of the ten 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). If that petitioner does not submit this evidence, then 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). The regulation at 8 C.F.R. § 204.5(h)(4) allows a petitioner to submit comparable material if he or she is able to demonstrate that the standards at 8 C.F.R. § 204.5(h)(3)(i)-(x) do not readily apply to the individual's occupation.

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 post-doctoral research fellow scholar in the Department of Molecular and Integrative Physiology at the [redacted] Because she 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). In denying the petition, the Director found that the Petitioner met only two of the initial evidentiary criteria, judging under 8 C.F.R. § 204.5(h)(3)(iv) and scholarly articles under 8 C.F.R. § 204.5(h)(3)(vi). The record reflects that the Petitioner served as a peer reviewer of manuscripts and posters for journals and a conference. In addition, she authored scholarly articles in professional publications. Accordingly, we agree with the Director that the Petitioner fulfilled the judging and scholarly articles criteria.

On appeal, the Petitioner maintains that she meets one additional criterion, discussed below. We have reviewed all of the evidence in the record and conclude that it does not support a finding that the Petitioner satisfies the requirements of at least three criteria.

> *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 has she made original contributions but that they have been of major significance in the field. For

example, a petitioner may show that the 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 in the field. The Petitioner contends that the Director did not properly evaluate the totality of her evidence relating to her citation record and recommendation letters.

As it relates to her citation record, the Petitioner provides updated information from Google Scholar reflecting citations for each of her published papers.[1] In addition, she submits data from Clarivate Analytics showing the baseline citation rates, baseline percentiles, and thresholds for high citations for various research fields from 2008 – 2018. Further, the Petitioner argues that "citation percentiles over citation aggregate comparisons" offers a better evaluation of the importance of a scientific article. Moreover, she contends that "[a] better method for evaluating significance is to compare citations counts between articles published *in the same field in the same year*" (emphasis in original).[2]

Specifically, the Petitioner argues that five of her articles rank among the top 10% most cited across her field for their respective years: 2013 *Journal of Clinical Endocrinology and Metabolism* article – 79 cites, 2012 *Journal of Endocrinology* article – 62 cites, 2015 *Journal of Clinical Endocrinology and Metabolism* article – 28 cites, 2016 *Biochemistry* article – 14 cites, and 2016 *Journal of Steroid Biochemistry and Molecular Biology* – 13 cites. The comparative ranking of a paper's citation rate, however, does not automatically establish it as a majorly significant contribution to the field, nor are we persuaded that every journal article ranked in the top 10% is necessarily considered by the field to be considered as an original contribution of major significance.[3] Furthermore, Clarivate Analytics indicates that it considers the following thresholds for "highly cited articles" in the Biology and Biochemistry field: 135 cites (2012), 109 cites (2013), 56 cites (2015), and 30 cites (2016). Even if we were persuaded by the Petitioner's arguments, her citations for the respective years are far below Clarivate Analytics' threshold for highly cited articles.

Here, the appropriate analysis is to determine whether a petitioner has shown that her 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. Publications and presentations are not sufficient under 8 C.F.R. § 204.5(h)(3)(v) absent evidence that they were of "major significance." *See Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009), *aff'd in part*, 596 F.3d 1115. Although her citations show that her research has received some attention from the field, the Petitioner did not establish that the number of citations to her individual papers demonstrate their "major significance."

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[1] The record shows that she has authored 12 papers in professional journals.

[2] In support of her arguments, the Petitioner references the papers, "A quantitative analysis of indicators of scientific performance" (*Scientometrics*, 2008) and "How to evaluate individual researchers working in the natural life sciences meaningfully? A proposal of methods based on percentiles of citations" (*Scientometrics*, 2014).

[3] For instance, according to the data from Clarivate Analytics, Biology and Biochemistry papers published in 2017 receiving only four citations and in 2018 only one citation are in the top 10%. The Petitioner has not demonstrated that papers with such citation counts have necessarily had a major, significant impact or influence in the field as evidenced by being among the top 10% of most highly cited articles according to year of publication.

Moreover, the Petitioner contends that "her research has been foundational to later explorations in her discipline" and references samples of other articles that cited to her work. The articles, however, do not distinguish the Petitioner's written work from the other articles cited. For example, in a *Molecular and Cellular Endocrinology* article, the authors cited to her 2013 *Journal of Clinical Endocrinology* article along with 54 articles by others, without noting or highlighting the importance of the Petitioner's findings or differentiating her work from the other cited articles.[4] The articles do not show the significance of the Petitioner's research to the overall field and the record does not show that either the individual or collective citations to her findings are reflective of "major significance" consistent with this regulatory criterion.[5]

In addition, the Petitioner maintains that she provided recommendation letters by "independent experts who have little reason to support [her] petition apart from the value of her participation in their mutual field of expertise." The letters, however, do not demonstrate the Petitioner has made original contributions of major significance to the field. Instead, the authors recount the Petitioner's research and findings, indicate their publications in journals, and mention her citation numbers without showing how her research is viewed by the field as being important and how its impact on the field rises to the level required by this criterion. Letters that specifically articulate how a petitioner's contributions are of major significance to the field and its impact on subsequent work add value.[6] On the other hand, letters that lack specifics and simply use hyperbolic language do not add value, and are not considered to be probative evidence that may form the basis for meeting this criterion.[7]

For instance, , professor at the , described the Petitioner's work and findings with human adrenal gland studies, but he did not explain the significance of her research to the field or how it has greatly influenced other researchers or scientists.[8] Similarly, , assistant professor at the summarized the Petitioner's project study, indicated her roles, and concluded that her "contributions to this project were essential for the main experiments of the work, and she was directly involved in the analysis that led to the article's findings." While attested to the Petitioner's importance to the study and subsequent article, she did not demonstrate how the field considers them to be of major significance. In addition, professor at the indicates that he "will be working together [with the Petitioner]" and states that "our collaborative project will identify the amount of 11-ketotestosterone that is biologically active," "will transform the scientific

[4] Although we cite to a sample, we have reviewed and considered each of the submitted articles.

[5] *See* USCIS Policy Memorandum PM 602-0005.1, *Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator's Field Manual (AFM) Chapter 22.2, AFM Update AD11-14* 8-9 (Dec. 22, 2010), https://www.uscis.gov/policymanual/HTML/PolicyManual.html; *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).

[6] *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8-9.

[7] *Id.*

[8] Although we discuss a sampling of letters, we have reviewed and considered each one.

and medical understanding," and "our combined efforts will help define the role of 11-ketotestosterone in these diseases." However, the current impact of her upcoming research has not been established, and did not show how her work already qualifies as a contribution of major significance. Letters that repeat the regulatory language but do not explain how an individual's contributions have already influenced the field are insufficient to establish original contributions of major significance in the field. *Kazarian*, 580 F.3d at 1036, *aff'd in part* 596 F.3d at 1115. Moreover, USCIS need not accept primarily conclusory statements. *1756, Inc. v. The U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.C. Dist. 1990).

Finally, the Petitioner maintains that she has been funded to conduct research from the and the Receiving funding to conduct research is not a contribution of major significance in-and-of itself. Rather, the Petitioner must establish that receiving the grants are reflective of her past works' major significance, or that her research conducted with the grants resulted in contributions of major significance in the field. Although the Petitioner provided evidence showing her receipt of the funding research, she did not demonstrate that such funding reflected the importance of her contributions, nor do they indicate the research results and whether they are majorly significant in the field.

For the reasons discussed above, the Petitioner has not shown that she has made original contributions of major significance in the field.

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, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward the top. 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 her 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 she 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).

For the foregoing reasons, the Petitioner has not shown that she qualifies for classification as an individual of extraordinary ability.

ORDER: The appeal is dismissed.

Cite as *Matter of J-V-R-*, ID# 1805464 (AAO Dec. 11, 2018)