U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF S-M-

DATE: FEB. 27, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a neuroscientist 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 Form I-140, Immigrant Petition for Alien Worker, concluding that the Petitioner had met only two of the ten initial evidentiary criteria, of which she must meet at least three.

On appeal, the Petitioner submits additional evidence and contends that she meets seven 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).

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 neuroscientist researcher. As she has not established that she has received a major, internationally recognized award, she must satisfy at least three of the ten criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). 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). On appeal, the Petitioner asserts that she also meets the following criteria: awards at 8 C.F.R. § 204.5(h)(3)(i), membership at 8 C.F.R. § 204.5(h)(3)(ii), published material at 8 C.F.R. § 204.5(h)(3)(iii), original contributions of major significance at 8 C.F.R. § 204.5(h)(3)(v), and display at 8 C.F.R. § 204.5(h)(3)(vii). Upon review, we conclude that the evidence in the record does not support a finding that the Petitioner meets the plain language requirements of at least three criteria.

A. Evidentiary Criteria

> *Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.* 8 C.F.R. § 204.5(h)(3)(i).

The Petitioner submitted documentation showing that the awarded her a research grant in 2011, which was renewed in 2012. The letter from the which awarded her the first installment of the grant, indicates that the Petitioner requested this through a grant proposal. The Petitioner states that this is equivalent to a research award because it was based upon her research abilities compared to others in her field. An email between the Petitioner and the assistant secretary for the indicates that the organization received 40 grant requests in 2011 and approved 20, and in 2012 it received 20 renewal requests and approved 8. While this evidence

shows that the Petitioner was in the upper half of those whose grant proposals were approved, the record does not sufficiently demonstrate that this grant is a nationally or internationally recognized award for excellence in the field.

The record also contains research documentation that the Petitioner submitted as grant applications to the and the but the evidence does not demonstrate that these grants were awarded or that they constitute a nationally or internationally recognized prize for excellence in the field.

In her brief, the Petitioner cites to 8 C.F.R. § 204.5(h)(4) which states that she may submit comparable evidence to establish eligibility if a criterion does not readily apply to her occupation. The Petitioner then requests consideration of her 2004 nomination by the of the award. We decline to do so, as she has not demonstrated why this criterion does not apply to her occupation. Additionally, a nomination differs from the receipt of an award, which the plain language of the regulation requires. The record does not establish that her 2004 nomination equates to a nationally or internationally recognized award. Therefore, the Petitioner has not established that she may submit comparable evidence and she has not demonstrated that she has satisfied the plain language of this criterion.

> *Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.* 8 C.F.R. § 204.5(h)(3)(ii).

The record indicates that the Petitioner has membership in the the and the The Petitioner submits a list of these organizations in which she claims membership, but the record does not contain documentation verifying her membership or that establishing that these associations require outstanding achievements of its members. Therefore, the Petitioner does not meet this criterion.

> *Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.* 8 C.F.R. § 204.5(h)(3)(iii).

The Petitioner submitted an article entitled, " in the fall 2012 issue of journal, published by This article discusses how the takes part in the vision research at the and identifies the specific research conducted by the Petitioner in this capacity. The article contains a short description of the Petitioner's research regarding the changes in retinal function that occur when a certain protein molecule has been blocked during postnatal development. While this constitutes published material about the Petitioner, the record does not establish that the journal is a professional or major

trade publication or other major media. The Petitioner states that while [redacted] is not a major trade journal, it is "well circulated" among Visual Ophthalmologists," and constitutes "major print/electronic media." The Petitioner does not provide corroborating evidence of its readership or other evidence demonstrating that this journal constitutes either a professional journal or major media. Accordingly, the Petitioner has not established that she meets this regulatory criterion.

> *Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.* 8 C.F.R. § 204.5(h)(3)(iv).

The Petitioner offers evidence that she sits on the editorial board for the journal *Matters*. We conclude therefore that the Petitioner meets the requirements of this criterion.

> *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).

This regulatory criterion contains multiple evidentiary elements that the Petitioner must satisfy. The first is evidence of the Petitioner's contributions in her field. These contributions must have already been realized rather than being potential, future contributions. She must also demonstrate that her contributions are original. The documentation must establish that the contributions are scientific, scholarly, artistic, athletic, or business-related in nature. The final requirement is that the contributions must rise to the level of major significance in the field as a whole, rather than to a project or to an organization. The phrase "major significance" is not superfluous. *See Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F. 3d 28, 31 (3d Cir. 1995), quoted in *APWU v. Potter*, 343 F.3d 619, 626 (2d Cir. 2003). Contributions of major significance connote that the Petitioner's work has significantly impacted the field. See 8 C.F.R. § 204.5(h)(3)(v); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 134 (D.D.C. 2013). To establish her eligibility under this criterion, the Petitioner submits letters from colleagues and compares her citation record to others in her field whom she claims have been classified as individuals of extraordinary ability.

In a letter, [redacted] Professor of Ophthalmology and Visual Science at [redacted] asserts that the Petitioner has "worked on projects such as biophysical studies of neuronal ion channels (the basis of signaling in neurons) and characterization of glycine receptors in the mouse retina (a key mechanism for processing of the retina image)." [redacted] further indicates that the she "has worked under internationally respected experts in the field of biophysics and retinal physiology and contributed to important new discoveries." While positive, this letter does not identify specific contributions attributable to the Petitioner, nor does it describe what impact her work has had on the field.

A letter from [redacted], Director of the [redacted] discusses several of the Petitioner's findings in the field. He indicates that the Petitioner "established a new molecular memory mechanism inherent to voltage gated sodium channels and threw light on the roles of glycine receptors in the synaptic inhibitory mechanisms in the mouse

retina." Similarly, Professor and Head of the Division of Neurobiology at the attests to the Petitioner's work in the field and states that the "[the Petitioner's] reputation continues to grow" and that her "exceptional abilities and outstanding work continue to impress those who come in contact with her." While indicative of the originality of the Petitioner's work, these letters fail to document its impact on the field.

The Petitioner compares her citation levels with those of four colleagues, two of whom she claims obtained classification in the extraordinary ability category. We note that determinations of eligibility are made after a comprehensive review of the record and no single factor, such as number of citations, is dispositive. Thus, the Petitioner's anecdotal comparison to other petitioners is inapposite. Publication of scholarly articles is but one of the factors considered in determining whether one has demonstrated original contributions of major significance in the field. Without corroborating evidence to provide context, the number of citations alone does not indicate the originality or significance of an individual's contributions. Here, while we acknowledge that the Petitioner has made original discoveries, the record does not demonstrate what impact her work has had on the field. Therefore, the evidence in the record does not establish that she meets this criterion.

> *Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.* 8 C.F.R. § 204.5(h)(3)(vi).

The Petitioner submits evidence of her authorship of scholarly articles in journals such as the and others in the field, including a report stating significant levels of citations to her work. Accordingly, we find that the Petitioner meets this criterion.

> *Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.* 8 C.F.R. § 204.5(h)(3)(vii).

The Petitioner contends that her illustrated research figures, which were placed on the front page of the in 2009, satisfy this requirement. She provides evidence of this journal's prestige in the field. However, the record does not demonstrate that the academic journal's cover represents an artistic showcase or exhibition. Furthermore, the evidence does not reflect that these illustrations discussed by the Petitioner amount to an artistic display of her work in the field. The Petitioner therefore has not established that she meets this criterion.

III. CONCLUSION

The Petitioner is not eligible because she has not submitted the required initial evidence of either a qualifying one-time achievement or documents that meet at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x). Thus, we do not need to fully address the totality of the materials in a final merits determination. *Kazarian*, 596 F.3d at 119-20. Nevertheless, we advise that we have

reviewed the record in the aggregate, concluding that it does not support a finding that the Petitioner has the level of expertise required for the classification sought.

ORDER: The appeal is dismissed.

Cite as *Matter of S-M-*, ID# 919818 (AAO Feb. 27, 2018)