U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 35390198

Date: JAN. 07, 2025

Appeal of Texas Service Center Decision

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

The Petitioner, a research scientist, seeks classification as an individual of extraordinary ability in regenerative medicine. *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 the Petitioner did not satisfy at least three of the initial evidentiary criteria. The matter is now before us on appeal pursuant to 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 record reflects that the Petitioner obtained a doctor of philosophy in the biological sciences (physiology) from the [redacted] in 2015. In addition, the Petitioner indicates that after receiving her degree, she was employed as a postdoctoral fellow by several organizations, such as the [redacted] in Argentina, the [redacted] in Brazil, and the [redacted] Texas. Currently, the Petitioner is a research associate on an H1B (specialty occupation) visa for [redacted] Research Department. She indicates her work at [redacted] involves using her skills in cardiovascular in vitro disease models and tissue engineering on projects which include addressing end-stage heart failure through bioengineering the human heart.

Because the Petitioner has not indicated or established her receipt of 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). The Petitioner claimed to have satisfied six of these criteria, but the Director determined the Petitioner fulfilled only one: scholarly articles at 8 C.F.R. § 204.5(h)(3)(vi). On appeal, the Petitioner maintains that she meets an additional three criteria, relating to judging at 8 C.F.R. § 204.5(h)(3)(iv), original contributions at 8 C.F.R. § 204.5(h)(3)(v), and leading or critical role at 8 C.F.R. § 204.5(h)(3)(viii).[1] For the reasons discussed below, the Petitioner did not demonstrate she meets at least three evidentiary criteria.

[1] On appeal, the Petitioner does not dispute the Director's finding that she had not established eligibility under criteria (i), related to lesser nationally or internationally recognized prizes or awards, and criterion (ii), related to membership in associations. Additionally, the Petitioner did not claim eligibility under 8 C.F.R. 204.5(h)(3)(iii), (vii), (ix), or (x) before the Director or on appeal. Any ground of ineligibility that is not raised on appeal is waived. *See Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (citing *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012)).

A. Evidentiary Criteria

1. "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).

USCIS determines whether the person has acted as the judge of the work of others in the same or an allied field of specification.[2] The petitioner must show that the person has not only been invited to judge the work of others, but also that the person actually participated in the judging of the work of others in the same or allied field of specialization.[3] For example, a petitioner might document the person's peer review work by submitting a copy of a request from a journal to the person to do the review, accompanied by evidence confirming that the person actually completed the review.[4]

The Petitioner claims to meet this criterion based on judging for journals of the open-access publisher MDPI. The record reflects the Petitioner submitted a "review confirmation certificate" dated 2024 from S-K-L-, "Publisher and President," which indicated:

> We are pleased to confirm that [the Petitioner] has reviewed 14 papers for the following MDPI journals in the period 2022-2024: International Journal of Molecular Sciences, Bioengineering, Antioxidants, Journal of Functional Biomaterials, Journal of Personalized Medicine, Life, Cells, Journal of Cardiovascular Development and Disease

The certificate, however, does not contain specific, detailed information reflecting probative evidence of the Petitioner's judging experience. For example, the certificate does not include names of individuals, titles of papers, or dates of judging and, therefore, does not elaborate or indicate who, what, and when the Petitioner purportedly judged.

In addition, the Petitioner did not offer sufficient evidence to support the claims in the review confirmation certificate. Although letters from the Petitioner's mentors G-L, D-A-T, and A-C-C-C- use identical language to assert that the Petitioner has participated in peer review activity for several of the above MDPI journals and other publications, such as "Clinical and Translational Medicine, Current Stem Cell Research & Therapy . . . Stem Cells Translational Medicine, Molecular and Cellular Biochemistry, and others," without additional information or evidence, the Petitioner's submission of a certificate and letters that make vague claims is insufficient to fulfill this criterion. Without evidence reflecting the Petitioner's participation as a judge of the work of others, including specific, detailed information, the Petitioner did not demonstrate the Petitioner meets this criterion.[5]

Accordingly, the Petitioner did not show she satisfies this criterion.

---

[2] *See generally* 6 *USCIS Policy Manual* F.2(B)(1), https://www.uscis.gov/policymanual.
[3] *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1).
[4] *Id.*
[5] In light of this finding, we need not consider the Director's other ground for the Petitioner's ineligibility for this criterion, that the submitted review confirmation certificate was of limited credibility and evidentiary value because the "signature" for S-K-L- appears to have been created by word processor.

2. "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).

The Petitioner argues that she fulfills this regulation based on four recommendation letters. USCIS determines whether the person has made original contributions in the field.[6] USCIS then determines whether the original contributions are of major significance to the field.[7] Examples of relevant evidence include, but are not limited to: published materials about the significance of the person's original work; testimonials, letters, and affidavits about the person's original work; documentation that the person's original work was cited at a level indicative of major significance in the field; and patents or licenses deriving from the person's work or evidence of commercial use of the person's work.[8]

Although the letters praise the Petitioner, the letters do not demonstrate that her contributions resulted in major significance in the field. Rather, the letters limit the relevance of the Petitioner's contributions to her employer. For instance, G-L- discusses the Petitioner's work at [redacted] "in 2023, where her insights into in vitro disease models opened a new horizon in our ischemia-reperfusion injury models" and "[h]er background in gene editing and large-scale cell production culminated in innovative approaches to generate enhanced therapeutic exosomes to protect organs from developing PGD," an ischemia-reperfusion injury affecting lung transplants. D-A-T, who indicates she recruited the Petitioner to [redacted] Research team, states the Petitioner undertook a unique project to scale-up production and in-depth characterization of human induced pluripotent stem cells (hiPSCs) to the billions for use in human heart tissue engineering and "[w]ithin a year, . . . was routinely producing about a billion cells per week!" These letters do not discuss how the Petitioner's involvement in large-scale production of hiPSCs somehow impacted or influenced the overall field rather than being limited to her employer.

Likewise, C-H-M-, the Petitioner's co-author, indicates she recruited the Petitioner as a postdoctoral research associate after "[r]ecognizing her potential to contribute significantly to our work at [redacted]" and praises her "outstanding contributions to our research goals" of developing a bioartificial heart using decellularized ECM repopulated with large numbers of hiPSC-derived cardiomyocytes, particularly more mature cardiomyocytes. She explains that the Petitioner optimized the large-scale expansion of cells; generated the cardiomyocytes; developed an optimized protocol for electromechanical stimulation in vitro; highlighted the impact of decellularized ECM on cardiomyocyte differentiation and maturation; and, possesses the required experience with gene-editing and CRISPR-Cas9 technology to show the relationship between ECM components like laminin and cell receptors like integrins, and modulate their expression in cardiomyocytes. Again, the letter reflects the Petitioner's value in her employer's models for cardiovascular disease study and therapy development, but does not articulate how the Petitioner's performance in her role at [redacted] somehow influenced or affected the field in a significantly major manner.

[6] *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1).
[7] *Id.*
[8] *Id.*

Similarly, A-C-C-C, in whose lab the Petitioner worked at the [redacted] indicates that the Petitioner's research involved "generating iPSCs from patients with arrhythmias that were followed at the National Cardiology Institute. . . . and engaged in CRISPR-Cas9 technology to correct the mutations found in these patients, which was a methodology that had not been implemented in the lab." Once again, the letter reflects the Petitioner's contributions to her employer rather than establishing how those contributions have been majorly significant in the greater field. Here, the letters do not establish the significance of her contributions beyond [redacted] or the [redacted] or show how those contributions have been considered to be majorly significant in the overall field. *See 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).[9]

Detailed letters from experts in the field explaining the nature and significance of the person's contribution may also provide valuable context for evaluating the claimed original contributions of major significance, particularly when the record includes documentation corroborating the claimed significance.[10] Submitted letters should specifically describe the person's contribution and its significance to the field and should also set forth the basis of the writer's knowledge and expertise.[11] In this case, the letters lack specific, detailed information explaining how the Petitioner has made original contributions of major significance in the field. 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).

The Petitioner also submits her publication and citation record from Google Scholar. But this evidence does not show that the impact of her work on the overall field of regenerative medicine rises to the level of an original contribution of major significance. The fact that the Petitioner has published articles that other researchers have referenced is not, by itself, indicative of a contribution of major significance. Publications are not sufficient under 8 C.F.R. § 204.5(h)(3)(v) absent evidence that they were of "major significance." Rather, 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.

We acknowledge, however, that a petitioner may present evidence that her articles "have provoked widespread commentary or received notice from others working in the field, or entries (particularly a goodly number) in a citation index which cite [her] work as authoritative in the field, may be probative of the significance of [her] contributions to the field of endeavor."[12] The Petitioner has not demonstrated, as she asserts, that any of the her articles resulted in an original contribution of major significance in the field. While the Petitioner submitted corroborating evidence in the form of expert opinion letters, that evidence, for the reasons already discussed, is not sufficient to establish that any of the Petitioner's research findings, individually or collectively, have remarkably impacted or influenced her field.

---

[9] *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1) (analysis under this criterion focuses on whether the person's original work constitutes major, significant contributions in the field).
[10] *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1).
[11] *Id.*
[12] *Id.*

In addition, the Petitioner submitted samples of partial research articles and a patent that cited to her work.[13] However, the mere citation of work by others does not automatically show "major significance." Here, the partial articles and patent do not reflect the impact of the Petitioner's research in the overall field beyond the authors who cited to her work. For instance, the Petitioner provided a partial article entitled, [redacted] (*Bioengineering*), in which the authors cite to her 2019 [redacted] article. However, the article does not distinguish or highlight the Petitioner's written work from the other cited papers, of which there are more than 99, nor does the article credit her work for being majorly significant.

The submitted research articles and patent reference the Petitioner's work as evidence of recent research, and, while these materials indicate that the authors' own research built upon the Petitioner's work, as well as the work of the other cited scientists, the Petitioner did not demonstrate that the overall field views her published findings as original contributions of major significance. Here, the Petitioner did not show that her published articles through citations rise to a level of "major significance," as required by this regulatory criterion.

Likewise, the record contains evidence of her attendance and participation at several national and international conferences but did not demonstrate how they resulted in 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 at 1115. Here, the Petitioner has not established that a presentation at a conference alone demonstrates a contribution of major significance in the field.

We also acknowledge the Petitioner's contention that her articles were published in journals with high rankings based on their impact factor. However, a publication's high ranking or impact is reflective of the publication's overall citation rate. It does not demonstrate the influence of any particular author within the field, how an author's research impacted the field, or establish a contribution of major significance in the field. That context must be provided by other evidence in the record.

The Petitioner further maintains that her [redacted] Award, recognizing her having authored the highest-ranked abstract from Brazil at an [redacted] scientific meeting, and her [redacted] Award constitute a contribution of major significance in the field. The regulation at 8 C.F.R § 204.5(h)(3)(i) is a separate criterion pertaining to awards. While some awards might also be relevant to whether the Petitioner has made original contributions of major significance, the Petitioner must demonstrate the relevance of her recognition at competitions to this criterion. The record does not contain evidence to establish this relevance, such as, for example, evidence that the [redacted] Award recognizes regenerative medicine contributions that have influenced the field as opposed to recognizing promising early career researchers.

For the reasons discussed above, considered both individually and collectively, the Petitioner has not shown she has made original contributions of major significance in the field. The evidence, consisting

[13] Although we discuss a sample article, we have reviewed and considered each of these materials.

of the citations to the Petitioner's published findings, the citation statistics, and the reference letters from her mentors in the field of regenerative medicine, establishes that the Petitioner has been productive, and that her published data and findings have been relied upon by others in their own research. It does not demonstrate that the Petitioner has made a contribution of major significance in the field of regenerative medicine. Therefore, she has not met this criterion.

B. Final Merits Determination

The Petitioner has not submitted the required initial evidence of either a one-time achievement or documentation showing she satisfies the two categories of evidence discussed above. Although the Petitioner also argues eligibility for the leading or critical role criterion under 8 C.F.R. § 204.5(h)(3)(viii), we need not reach this additional ground because the Petitioner cannot fulfill the initial evidentiary requirement of at least three criteria under 8 C.F.R. § 204.5(h)(3). We also need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. Accordingly, we reserve these issues.[14] Nevertheless, we have reviewed the record in the aggregate, concluding it does not support a conclusion 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 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 the significance of her work is indicative of the required sustained national or international acclaim or 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 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). The record does not contain sufficient evidence establishing the Petitioner is among the upper echelon in her field.

[14] *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach); *see also Matter of L-A-C-*, 26 I&N Dec. 516, n.7 (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

III. CONCLUSION

For the reasons discussed above, the Petitioner has not demonstrated her eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.