U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34835090

Date: JAN. 8, 2025

Appeal of Texas Service Center Decision

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

The Petitioner, a business and social psychology researcher, seeks to classify himself 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 petition, concluding that the record does not establish the Petitioner received a one-time achievement of a major, internationally recognized award. The Director further concluded that the record does not satisfy, in the alternative, at least three of the 10 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) of the Act makes visas available to immigrants with extraordinary ability if:

> (i) the [noncitizen] 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 [noncitizen] seeks to enter the United States to continue work in the area of extraordinary ability, and
>
> (iii) the [noncitizen]'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 their achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then they must provide sufficient qualifying documentation that meets at least three of the 10 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).

II. ANALYSIS

As noted above, the Director concluded the record does not establish the Petitioner received a one-time achievement of a major, internationally recognized award. The Director further determined that the record does not satisfy, in the alternative, at least three of the 10 criteria listed at 8 C.F.R. §§ 204.5(h)(3)(i)-(x). Specifically, the Director determined that the record satisfies the criteria at 8 C.F.R. §§ 204.5(h)(3)(iv) and (vi). However, the Director also concluded that the record does not satisfy the criterion at 8 C.F.R. § 204.5(h)(3)(v). On appeal, the Petitioner reasserts that, in addition to satisfying the criteria at 8 C.F.R. §§ 204.5(h)(3)(iv) and (vi), the record satisfies the criterion at 8 C.F.R. § 204.5(h)(3)(v). The Petitioner does not assert on appeal that the record satisfies the criteria at 8 C.F.R. §§ 204.5(h)(3)(i)-(iii), (vii)-(x), thereby waiving these criteria. *See, e.g.*, *Matter of M-A-S-*, 24 I&N Dec. 762, 767 n.2 (BIA 2009) (citing *Greenlaw v. U.S.*, 554 U.S. 237 (2008) (upholding the party presentation rule)). The Petitioner does not overcome the Director's denial for the reasons discussed below.

> *Evidence of the* [*individual'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 Director acknowledged that the record contains copies of articles authored or coauthored by the Petitioner, citation records of those articles, and letters of recommendation. The Director further acknowledged that "[t]he record shows that the Petitioner has worked on projects and conducted research which has been published," and "some of the articles were published in major journals." However, the Director distinguished evidence of "the prestigious status of a journal" from evidence that an individual's original contribution has had major significance in the field, which must be established beyond a work merely being published, a separate criterion contemplated at 8 C.F.R. § 204.5(h)(3)(vi), which the Director separately found the record satisfies. In turn, the Director observed, "The citation record demonstrates awareness of the [P]etitioner's work and its value; however, the [P]etitioner has not demonstrated that the number of citations is indicative of major significance in the field." Similarly, the Director explained that, although the letters of recommendation "compliment the various aspects of the Petitioner's work, they do not sufficiently

establish that the Petitioner made contributions of major significance in the field." Based on those issues, the Director concluded that the record does not satisfy the criterion at 8 C.F.R. § 204.5(h)(3)(v).

On appeal, the Petitioner first asserts that the Director erred by "refus[ing] to issue clear findings regarding the originality of contributions to the field," despite also conceding that the Director "acknowledged that publication is evidence of originality." The Petitioner characterized the perceived ambiguity in the decision regarding whether the Petitioner's publications were original, as contemplated by the criterion at 8 C.F.R. § 204.5(h)(3)(v), as "an abuse of discretion as presented in [*Buletini v. INS*, 860 F.Supp. 1222, 1226 (E.D. Mich. 1994)]."

The Director explained that the criterion at 8 C.F.R. § 204.5(h)(3)(v) "requires evidence (1) of the [Petitioner's] contributions related to scientific, scholarly, artistic, athletic, or business fields, (2) that the [Petitioner's] contribution is original, and (3) that the [Petitioner's] original contribution has been of major significance." The Director further explained that the record "must satisfy all of these elements to meet the plain language requirements of [the criterion at 8 C.F.R. § 204.5(h)(3)(v)]." Here, the issue of whether the Petitioner's contributions were of major significance to the field of business and social psychology research is dispositive for determining whether the record satisfies the criterion at 8 C.F.R. § 204.5(h)(3)(v). Thus, "a clear finding regarding originality" would not affect the outcome of the ultimate decision. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision). Therefore, the Director did not err by "refus[ing] to issue clear findings regarding the originality of contributions to the field," as the Petitioner asserts on appeal.

The Petitioner reasserts on appeal that the record demonstrates his published articles constitute original contributions of major significance in the field. More specifically, the Petitioner reasserts that "three of his published papers have received enough citations to rank among the top 10% of the most-cited articles in Economics & Business in their respective years of publication." He also restates that "statistics from OpenAlex confirm[] that his 224 citations at the time of filing placed him in the top 1% of the more than 5.4 million authors publishing research in business and social psychology." He "contend[s] that citation alone is evidence of notability" because "any particular research article only cites several dozen articles from an enormous pool of hundreds of thousands if not millions of relevant articles. As such, every citation presented in an article is acknowledgment of the significance and importance of that particular work." The Petitioner further reasserts on appeal that letters of recommendation from Dr. [redacted] Dr. [redacted], and [redacted] are evidence that the Petitioner's original contributions are of major significance to the field.

The record contains a copy of Google Scholar citation rates for 23 research articles that the Petitioner co-authored, published between 2017-23, with 224 total citations for those 23 articles at the time the Petitioner filed the Form I-140, Immigrant Petition for Alien Workers. We acknowledge that the record establishes the Petitioner's published business and social psychology research articles are original contributions in the field of business and social psychology research. However, the record does not establish how those original contributions may have been of major significance in the field of business and social psychology research.

The record contains a copy of citation rates for various research fields provided by Clarivate Analytics InCites Essential Science Indicators, grouping citation rates for respective fields into percentiles.

However, the Clarivate Analytics data groups publications into overly broad generalizations, such as "Economics & Business," including disparate specializations for which there may be routinely few or no citations.[1] Relatedly, the Clarivate Analytics citation rate information bears a disclaimer, acknowledging, "Citation frequency is highly skewed with many infrequently cited papers and relatively few highly cited papers. Consequently, citation rates should not be interpreted as representing the central tendency of the distribution." The disclaimer further acknowledges that data for recent years' publications are unreliable and uninformative because "citation counts grow over time. Typically, the citation rates of papers published in the last three years are below the citation rates for all years."

The record also contains unauthenticated documents that indicate their "data source" is "OpenAlex," to which the Petitioner refers on appeal.[2] Similar to the Clarivate Analytics information, they group information into an overly broad category of "Areas of Research[:] Business, Social psychology." However, the documents also provide internally inconsistent information. For example, they indicate that citation counts of "0" are in all percentiles between 5% and 70%, inclusive; that citation counts of "1" are in both the 75th and 80th percentiles; that publication counts of "1" are in all percentiles between 5% and 80%, inclusive; that publication counts of "2" are in all percentiles between the 85th and 91st, inclusive; and that publication counts of "3" are in the 92nd, 93rd, and 94th percentiles. The internal inconsistency in the information indicated on these documents cast doubt on their reliability and sufficiency, *see Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

Because the citation rate documents noted above group information into overly broad categories, such as all specialties related to "Economics & Business" or "Business, Social psychology," and because the Clarivate Analytics disclaimer acknowledges that the information is "highly skewed" with particularly unreliable and uninformative data for recent years, they bear minimal probative value. The Petitioner does not otherwise provide objective, reliable information regarding the probative value of his co-authored articles' citation rates that may establish how the number of citations a particular article has received may establish the article has had major significance in the field, as contemplated by the criterion at 8 C.F.R. § 204.5(h)(3)(v).

Relatedly, the Petitioner's "conten[tion] that citation alone is evidence of notability" is unpersuasive. The Petitioner elaborates that, because "any particular research article only cites several dozen articles from an enormous pool of hundreds of thousands if not millions of relevant articles. As such, every citation presented in an article is acknowledgment of the significance and importance of that particular work." The Petitioner's contention presupposes that all citations are invariably favorable. However, a citation may be for the purpose of identifying research that is faulty or superseded, which would be unfavorable to the cited article and its authors. Moreover, an article that receives a noteworthy number of citations for the purpose of identifying research that is faulty or superseded would be particularly unfavorable. Thus, without context, citation rates alone are not evidence of favorable attention.

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[1] We note that business and social psychology research, too, is an overly broad, conflated generalization.

[2] The documents in question are two unnumbered pages of similarly formatted tables of data. However, unlike the Clarivate Analytics information, the documents do not bear distinctive characteristics or other indicia of the individual or entity that created them, such as a corporate logo, copyright information, or a URL in the margin. In evaluating the evidence, the truth is to be determined not by the quantity of evidence alone, but by its quality. *See Chawathe*, 25 I&N Dec. at 376. Because the evidence does not indicate the source as "OpenAlex," it bears minimal probative value.

The letters of recommendation from Dr. [redacted], Dr. [redacted] and Dr. [redacted] opine on "the value of [the Petitioner's] ongoing work in the field" and that his research has "gone on to influence the work of others," asserting that some of the articles coauthored by the Petitioner are "an important reference for our work." In particular, on appeal the Petitioner quotes passages from Dr. [redacted] and Dr. [redacted] letters of recommendation, which provide generalized economic information, rather than addressing how the Petitioner's published articles have been of major significance to the field. Although the letters of recommendation demonstrate the respective authors' familiarity with some of the Petitioner's published articles and their awareness that other researchers have cited the Petitioner's published articles, the letters do not establish how the vague "value," "influence," and "importan[ce]" of the Petitioner's published articles have been of major significance in the field, as contemplated by the criterion at 8 C.F.R. § 204.5(h)(3)(v).

In summation, the record does not establish how the Petitioner's published articles have been of major significance in the field of business and social psychology research, as contemplated by the criterion at 8 C.F.R. § 204.5(h)(3)(v). Therefore, the record does not satisfy at least three of the 10 criteria at of the Petitioner's published articles have been of major significance in the field, as contemplated by the criteria at 8 C.F.R. §§ 204.5(h)(3)(i)-(x).

III. CONCLUSION

The Petitioner has not established he received a one-time achievement or, in the alternative, evidence that meets at least three of the 10 criteria at 8 C.F.R. §§ 204.5(h)(3)(i)-(x). As a result, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. *See INS v. Bagamasbad*, 429 U.S. at 25; *see also Matter of L-A-C-*, 26 I&N Dec. at 526 n.7. Nevertheless, we have reviewed the record in the aggregate, concluding that it does not support a conclusion that the Petitioner has established the acclaim and recognition required for the classification sought.

The Petitioner has not shown that the significance of his 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 that he 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; *see also* 8 C.F.R. § 204.5(h)(2).

ORDER: The appeal is dismissed.