U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF I-G-K-

DATE: JAN. 23, 2017

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, an internal medicine physician, 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 the Petitioner had satisfied only one of the initial evidentiary criteria, of which he must meet at least three.

The matter is now before us on appeal. In his appeal, the Petitioner submits previously presented documentation and a brief stating that he meets at least three criteria.

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

I. LAW

Section 203(b) of the Act states in pertinent part:

> (1) Priority workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):
>
> (A) Aliens with extraordinary ability. – An alien is described in this subparagraph 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 his or her 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 he or she must provide sufficient qualifying documentation that meets at least three of the 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).

However, satisfaction of at least three criteria does not, in and of itself, establish eligibility for this classification. *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), *aff'd*, 683 F.3d. 1030 (9th Cir. 2012); *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (holding that the "truth is to be determined not by the quantity of evidence alone but by its quality" and that U.S. Citizenship and Immigration Services (USCIS) examines "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"). Accordingly, where a petitioner submits qualifying evidence under at least three criteria, we will determine whether the totality of 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.

II. ANALYSIS

The Petitioner is currently an internal medicine physician at [redacted] Because the Petitioner has not indicated or established that he has received a major, internationally recognized award, he 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 that the Petitioner met the judging criterion under 8 C.F.R. § 204.5(h)(3)(iv). On appeal, the Petitioner maintains that he also meets the original contributions criterion under 8 C.F.R. § 204.5(h)(3)(v), the scholarly articles criterion under 8 C.F.R. § 204.5(h)(3)(vi), and the leading or critical role criterion under 8 C.F.R. § 204.5(h)(3)(viii).[1] We have reviewed all of the evidence in the record of proceedings, and it does

[1] Although he previously claimed eligibility for the awards criterion under 8 C.F.R. § 204.5(h)(3)(i), the membership criterion under 8 C.F.R. § 204.5(h)(3)(ii), the display criterion at C.F.R. § 204.5(h)(3)(vii), and the high salary criterion under 8 C.F.R. § 204.5(h)(3)(ix), on appeal the Petitioner does not contest the decision of the Director, offer further arguments, or submit additional evidence for these criteria, nor does the record support a finding that he meets them. Accordingly, we will not address these criteria in this decision.

not support a finding that the Petitioner meets the plain language requirements of at least three criteria.

A. Evidentiary Criteria

> *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 record contains evidence reflecting that the Petitioner has served on a peer review committee evaluating clinical practices and processes at [redacted] As such, the Director found that the Petitioner met this criterion, and we concur with that determination.

> *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).

On appeal, the Petitioner contends that he "proposed a new disease called [redacted] and that "[t]his disease would be named after [him] when more and more cases are diagnosed and more citations start appearing." The record of proceedings contains the Petitioner's article, '[redacted] which was published in the [redacted] in [redacted] 2015. The Petitioner presented evidence showing that this article has been cited one time. Generally, citations can serve as an indication that the field has taken interest in a petitioner's work. While the Petitioner provided the article that cited to his work, the article does not reflect that his work was singled out as particularly important. Rather, the Petitioner's article was used as background information to the authors' paper. In this case, the Petitioner has not demonstrated that the citation to his paper is reflective of a contribution "of major significance in the field."

Furthermore, the record includes several recommendation letters that mention the publication of the petitioner's paper. However, the letters do not explain how the authors have used the Petitioner's published finding in their own work or how his work is considered as a contribution 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." *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009) *aff'd in part* 596 F.3d 1115. In 2010, the *Kazarian* court reaffirmed its holding that we did not abuse our discretion in our adverse finding relating to this criterion. 596 F.3d at 1122. While the selection of the Petitioner's article in a professional journal verifies the originality of his work, it does not necessarily reflect that his work is considered of major significance. As discussed above, the Petitioner's citation history does not support a finding that his contributions have been of major significance in the field. Nor does the record include other documentary evidence sufficient to support such statements.

In addition, although the Petitioner indicates that the proposed disease might be named after him in the future, the actual impact has yet to be determined. A petitioner cannot establish eligibility under

this criterion based on the expectation of future significance. Eligibility must be demonstrated at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). The Petitioner did not establish that his proposal resulted in a final determination of a new disease or demonstrate how this signified a major contribution.

The letters considered above primarily contain attestations of the Petitioner's status in the field without providing specific examples of how his contributions rise to a level consistent with major significance in the field. 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. In 2010, the *Kazarian* court reiterated that the USCIS' conclusion that the "letters from physics professors attesting to [the petitioner's] contributions in the field" were insufficient was "consistent with the relevant regulatory language." 596 F.3d at 1122. 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). Without supporting evidence, the Petitioner has not met his burden of showing that he has made original contributions of major significance in the field.

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).

As discussed above, the Petitioner authored an article that was published in the [redacted] Accordingly, the Petitioner meets this criterion.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. 8 C.F.R. § 204.5(h)(3)(viii).

On appeal, the Petitioner states that the Director previously determined that he met this criterion in the issuance of a request for evidence. In the decision, however, the Director indicated that in reviewing the evidence, the Petitioner did not meet the plain language of this criterion. Communication in a request for evidence is not a final agency determination, and the record reflects that the Director ultimately made an unfavorable finding for this criterion. As discussed below, we have reviewed the record of proceedings to determine whether the Petitioner meets this criterion.

The record reflects that the Petitioner bases his eligibility on his role as vice chair of the internal medical department at [redacted] and submitted several reference letters. According to [redacted] vice president of medical affairs at [redacted] the Petitioner is the vice chair of the internal medicine department who "reviews certain practice parameters of all physicians in his department 2 times a year." In addition, [redacted] stated that as vice chair, the Petitioner performs "an integral role in meetings making the fusion of different hospital systems protocols merge uniformly." Further, [redacted] chair of the internal medicine department at [redacted] attested to the Petitioner's role in reviewing the quality of inpatient care of other physicians. Moreover, [redacted] senior medical director at [redacted] described

the Petitioner's role as "serving the usual responsibilities, including fairly sensitive peer review situations."

In general, a leading role is evidenced from the role itself. Here, the Petitioner is vice chair of the internal medicine department. However, the letters do not indicate where his position fits in the overall hierarchy of Based on the Petitioner's position title and the lack of details contained in his reference letters, the Petitioner has not shown that he performed in a leading role for The record does not include evidence, for example, differentiating his role as vice chair of the internal medical department from the roles of the employees in other departments or as a whole.

Furthermore, a critical role is one in which a petitioner was responsible for the success or standing of the organization or establishment. Although the letters reflected that he reviews the work of other physicians, the Petitioner did not show how his work impacted standing in the field. For instance, the Petitioner did not provide evidence reflecting that garnered attention based on his work. Accordingly, the Petitioner has not established that he performed in a critical role for

Finally, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires the organization or establishment to have a distinguished reputation. The record does not include sufficient evidence to establish that enjoys a distinguished reputation. The submitted letters, for example, do not discuss reputation in the community or reference any awards or rankings. Therefore, the Petitioner has not shown that has risen to a level of eminence. For these reasons, the Petitioner has not met his burden of demonstrating his eligibility under this criterion.

B. Summary

As explained above, the record only satisfies two of the regulatory criteria. As a result, the Petitioner has not submitted the required initial evidence of either a one-time achievement or documents that meet at least three of the criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

Had the Petitioner satisfied at least three evidentiary categories, the next step would be a final merits determination that considers all of evidence in the context of whether or not the Petitioner has demonstrated: (1) 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," and (2) that the individual "has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20. Although we need not provide the type of final merits determination referenced in *Kazarian*, a review of the record in the aggregate supports a finding that the Petitioner has not established the level of expertise required for the classification sought.

III. CONCLUSION

For the above stated reasons, the Petitioner has not met his burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013).

ORDER: The appeal is dismissed.

Cite as *Matter of I-G-K-*, ID# 134934 (AAO Jan. 23, 2017)