U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF E-B-M-K-

DATE: JUNE 6, 2017

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, an insect and pest control 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 Texas Service Center denied the Form I-140, Immigrant Petition for Alien Worker, concluding that the Petitioner had satisfied two of the initial evidentiary criteria, of which he must meet at least three.

On appeal, the Petitioner submits additional 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 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). Alternately, 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, 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). 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 researcher at the [redacted] in Sudan. 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 ten criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). In denying the petition, the Director found that the Petitioner met the judging criterion under 8 C.F.R. § 204.5(h)(3)(iv) and the scholarly articles criterion under 8 C.F.R. § 204.5(h)(3)(vi).

On appeal, the Petitioner maintains that he meets the original contributions criterion under § 204.5(h)(3)(v).[1] We have reviewed all of the evidence in the record, and conclude that it does not support a finding that the Petitioner meets the plain language requirements of at least three criteria.

[1] While the Petitioner previously claimed eligibility for the membership criterion under 8 C.F.R. § 204.5(h)(3)(ii) and the leading or critical role criterion under 8 C.F.R. § 204.5(h)(3)(viii), he does not continue to do so on appeal, nor does the record support a finding that he meets them. Accordingly, we will not further address these criteria in our decision.

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 reflects that the Petitioner has served as an editor for and has reviewed manuscripts for professional publications. 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).

The Petitioner contends that his research in the field of insects, insecticide, and non-toxic solutions has "changed the face of fruit production and export in his home country of Sudan" and has "been adopted in countries with similar climate[s] around the world." In support of his claims, the Petitioner provides evidence of the approval of his three patents from the Republic of Sudan. The Petitioner indicates that his patent for has increased employment in the agricultural and related industries and "[t]he [a]ffect on the Sudanese economy has been tremendous." Moreover, he asserts that, based on his research on the use of the it is now used around the world against the and that he has also developed non-toxic alternatives including radiation, gamma rays, and lime juice to combat this insect.

Regarding the Petitioner submits screenshots from regarding its advertisement for Although his patent from reflects that he invented a new formula for the the documentation does not show that has utilized his formula. Nor does the record demonstrate that his formula, as opposed to previous versions, has influenced others in the field or otherwise represents a contribution of major significance. *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). Moreover, he did not provide supporting evidence to establish that has increased Sudan's employment and affected the economy, as asserted on appeal.

The Petitioner's other two patents relate to measuring the susceptibility of insects and others to poisons and pesticides and the use of temperatures to fight the With regard to the significance of these patents, the Petitioner presents four of his research papers and evidence of his authorship of a book. While the evidence shows the originality of his research, it does not reflect that his work has been of original significance. For instance, the Petitioner did not provide documentation reflecting that others have extensively cited his written work or that his research has been widely applied in the field, and the record does not corroborate his claim that his research on is used around the world to fight the Overall, the Petitioner has not demonstrated that his patents reflect a contribution of major significance.

The record also contains reference letters from the Petitioner's colleagues, who generally indicate that he has authored papers and participated in scientific conferences, but do not elaborate on the

importance or impact of his patents and related research.[2] For instance, [redacted] of the [redacted] states: "With his long list [of] publications, his different teaching courses, his co-advising theses and dissertations, and his patents, [the Petitioner] is an outstanding teacher-researcher particularly in the field of pest management." Another reference, [redacted] a [redacted] attests that "[the Petitioner's] distinguished research and technical work is evidenced by [the fact that] his patents and research publications appeared and [were] cited in several internationally peer-reviewed journals." Again, while the selection of the Petitioner's articles in professional journals verifies the originality of his work, it does not necessarily reflect that his research is considered of major significance. Similarly, the Petitioner offers evidence of his participation and poster presentations at various conferences. He did not, however, demonstrate that his presentations have been frequently cited by other researchers or have otherwise significantly impacted 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.

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. 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 articles that were published in professional journals, such as the [redacted]
Therefore, the Director found that the Petitioner satisfied this criterion, and we agree with that determination.

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

[2] While we discuss only a sampling of these letters, we have reviewed and considered each one.

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 level of expertise required for the classification sought. For the foregoing reasons, the Petitioner has not shown that he qualifies for classification as an individual of extraordinary ability.

ORDER: The appeal is dismissed.

Cite as *Matter of E-B-M-K-*, ID# 379168 (AAO June 6, 2017)