U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF M-S-

DATE: JUNE 13, 2017

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, an automation and control engineer, 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)(1)(A) of the Act makes visas available to qualified 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,
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> (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
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> (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 senior automation and control engineer at [redacted] in [redacted] Texas. 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), but that he failed to meet a third, required criterion.

On appeal, the Petitioner maintains that, in addition to the judging and scholarly articles criteria, he meets 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 published material criterion under 8 C.F.R. § 204.5(h)(3)(iii), and the original contributions criterion under 8 C.F.R. § 204.5(h)(3)(v).[1] We have reviewed all of the

[1] The Petitioner also requests that we consider any portion of the evidence that constitutes comparable evidence as "a finding that the evidence satisfies this criterion." The comparable evidence regulation at 8 C.F.R. § 204.5(h)(4) requires that a petitioner demonstrate why a specific criterion is not readily applicable to his occupation, and how the submitted evidence is comparable to that criterion. Here, the Petitioner does not explain why the criteria do not apply to an automation and control engineer. He does not identify "this criterion," which evidence should be considered, and how the documentation is comparable. Further, an inability to meet a criterion does not necessarily mean that the criterion does not apply to a petitioner's occupation. Accordingly, the Petitioner has not established that he meets the requirements of the provision at 8 C.F.R. § 204.5(h)(4).

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.

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).

On appeal, the Petitioner contends that he meets this criterion with a certificate naming him the [redacted] According to the Petitioner, this competition took place at the [redacted] Conference put on by the [redacted] The Petitioner claims that this event is "the premier international conference on [redacted]" We note, however, that the conference appears to be one of over 40 such conferences hosted by [redacted] each year.[2] The Petitioner does not offer information to distinguish this conference from the others hosted by [redacted], or other similar organizations. Regarding the specific award received, the Petitioner references a recommendation letter from Dr. [redacted] laboratory director at the [redacted] Dr. [redacted] indicated that the Petitioner received the first place prize despite holding a master's degree at the time, when the other participants held doctoral degrees. Although such a circumstance makes the Petitioner's win more impressive, it does not suggest national or international recognition associated with the award. Although he makes arguments regarding [redacted] reputation and his competition's educational credentials, these are not determining factors for this criterion. Based on the material provided, the Petitioner has not shown that his conference award is "nationally or internationally recognized" for excellence in the field.

In addition, the Petitioner argues that he has been awarded "numerous highly competitive scholarships" from [redacted], the [redacted] and the [redacted] In support of this statement, he refers to his curriculum vitae. A petitioner cannot, however, establish a claimed fact without independent evidence. Moreover, academic study is generally not a field of endeavor, but training for a future position. As such, academic scholarships, student awards, and postdoctoral fellowships are not nationally or internationally recognized prizes or awards in a field.

Further, the Petitioner claims that his two registered patents in the United States and China, as well as two pending patents, satisfy this criterion. In general, a patent is a "[l]imited legal monopoly granted to an individual or firm to make, use, and sell its invention, and to exclude others from doing so."[3] Here, the Petitioner has not shown that receiving patents in-and-of-itself is tantamount to garnering nationally or internationally recognized prizes or awards for excellence. Nevertheless, the Petitioner's patents will be considered below as they relate to the significance of his original contributions under the regulation at 8 C.F.R. § 204.5(h)(3)(v).

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[2] *See* Events, [redacted] (last visited May 11, 2017).

[3] *See* "patent," Business Dictionary, http://www.businessdictionary.com/definition/patent.html (last visited May 2, 2017). A copy of the webpage is printed and incorporated into the record of proceeding.

Finally, the Petitioner maintains that his selection as a peer reviewer for scientific journals is comparable to receiving national or international awards. The regulations, however, include a separate criterion for judging, 8 C.F.R. § 204.5(h)(3)(iv), discussed later. Consistent with the regulatory requirement that a petitioner meet at least three separate criteria, we will generally not consider evidence relating to the judging criterion to satisfy this one. Moreover, the Petitioner did not demonstrate how being selected to review articles is equivalent to receiving nationally or internationally recognized prizes or awards for excellence in the field. For these reasons, the Petitioner has not established that he meets 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 Petitioner states that he has no evidence to satisfy this criterion but requests that, if he acquires such a membership during the pendency of this appeal, he be permitted to supplement the record. As of the date of this decision, the Petitioner has not provided evidence demonstrating his membership in an association. In addition, the Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1). Accordingly, the Petitioner has not shown that he meets 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 claims that the Director required "that the published material be *primarily* about the alien" (emphasis in original). The plain language of this regulation requires published material "about" a petitioner relating to his or her work in professional or major trade publication or other major media, including the title, date, and author of the material. Therefore, the articles that are not regarding the Petitioner, but only discuss or reference his research or work, do not meet this regulatory criterion. *See, e.g., Negro-Plumpe v. Okin,* 2:07-CV-820-ECR-RJJ at *1, *7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles concerning a show do not pertain to the actor). For the following reasons, we are not persuaded by the Petitioner's arguments.

Initially, the Petitioner provided evidence relating to the citation of his work by others in their scientific journal articles. Scholarly articles that cite to the Petitioner's work, however, do not meet the plain language of this criterion because they do not discuss the Petitioner and are not about the Petitioner relating to his work. Citations to the Petitioner's work will be considered below as they relate to the significance of the Petitioner's original contributions under the regulation at 8 C.F.R. § 204.5(h)(3)(v).

The record also contains articles from the [redacted] a screenshot from [redacted], and a product description from [redacted]. This documentation, however, does not mention the Petitioner and is not otherwise about him relating to his work. Thus, the Petitioner has not established that the evidence constitutes published material pertaining to him. Moreover, the Petitioner only provided the author for the [redacted] article, and he did not include the date for the product description, while title, date, and author are required for all material. Finally, the Petitioner does not provide documentation or rationale to support characterizing the stated sources as professional or major trade publications or other major media. For these reasons, the Petitioner did not demonstrate that he satisfies this 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 record contains evidence reflecting that the Petitioner has reviewed manuscripts for professional publications, such as [redacted]. Therefore, 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).

In order to satisfy the plain language of this regulatory criterion, the Petitioner must demonstrate that his contributions are not only original, but also "of major significance in the field." The Petitioner argues that his work on the [redacted], the [redacted], and the [redacted] qualify under this criterion. He emphasizes that, in each case, he was the first researcher to develop the systems or devices. In support of his claims, the Petitioner indicates that he published three articles regarding [redacted] three articles pertaining to [redacted], and nine articles for [redacted]. In addition, the Petitioner provides documentation showing that his articles have been cited 14, 1, and 13 times, respectively. Generally, citations confirm that the field has taken some interest in a researcher's work. Although the Petitioner submits some examples of articles that cited to his works, they do not reflect that his works were singled out as particularly important. Rather, the Petitioner's articles were utilized as background information for the authors' papers. Moreover, the Petitioner points out that his one article regarding [redacted] was recognized by [redacted] as one of the top 25 articles from [redacted] to [redacted] 2014; however the record indicates that it only garnered three citations. In this case, the Petitioner has not demonstrated that the citations to his research, considered both individually and collectively, are commensurate with a contribution "of major significance in the field."

The Petitioner also offers evidence of his presentations at various conferences, such as the [redacted] Participation in conferences demonstrates that his findings were shared with others and may be acknowledged as original based

on their selection for presentation. The record, however, does not show that his presentations have been frequently cited by other researchers or have otherwise significantly impacted the field. In fact, the Petitioner presented evidence showing that his conference proceedings were collectively cited five times.[4] 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.

Regarding the Petitioner indicates that he received two patents, one issued in the United States and the other issued in China. A third patent is pending with the U.S. Patent and Trademark Office. In general, a patent recognizes the originality of an idea, but it does not demonstrate a contribution of major significance in the field. Here, the Petitioner has not shown that his patents have impacted or influenced the field to such an extent that we can consider them indicative of contributions of major significance.

The Petitioner also references his recommendation letters from Dr. vice provost for research and graduate studies at the , and Dr. chief engineer. Dr. discussed the Petitioner's collaborative research with Dr. at the in Based on their research, Dr. indicated that she formed a startup company, , to offer the deicing technology on a larger scale. In addition, Dr. stated that this expertise has been installed at , and that the has expressed interest in installing it across the state. Although she provided an example where has been utilized, Dr. did not show or describe how work has widely impacted the field, so as to demonstrate original contributions 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 as a whole).

In his letter, Dr. praised the Petitioner's and stated that it "is groundbreaking because it will substantially reduce the operation and maintenance costs of these large flexible structures in the oil and gas industry." However, a petitioner cannot establish eligibility under this criterion based on the expectation of future significance. Given the descriptions in terms of future applicability and determinations that may occur at a later date, the actual impact on the field has yet to be determined. The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1). Similarly, other recommendation letters also speak in terms of the Petitioner's prospective influence, rather than show that his contributions are already of major significance. They note, for example, that his research "holds tremendous potential for various applications in the future structural vibration control," "will improve the performance of multimillion dollar investments," and "will also prove to be exceptionally valuable in creating a revolution in the windmill construction industry."

[4] Although the Petitioner submits updated citation numbers on appeal, we note that he must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing. 8 C.F.R. § 103.2(b)(1).

In addition, 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 meet this criterion. *Kazarian*, 580 F.3d at 1036, *aff'd in part* 596 F.3d at 1115. 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). As a result, 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 and the Accordingly, the Director determined that the Petitioner satisfied this criterion, and we agree with that finding.

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 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 M-S-*, ID# 337989 (AAO June 13, 2017)