U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF Q-L-

DATE: MAR. 4, 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, an autophagy scientist, 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 (NSC) initially approved the Form I-140, Immigrant Petition for Alien Worker. However, the Director subsequently revoked the petition, concluding that the Petitioner had satisfied only two of the ten initial evidentiary criteria, of which she must meet at least three.

On appeal, the Petitioner submits additional documentation and a brief, arguing that she meets at least three of the ten criteria.

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 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). If that petitioner does not submit this evidence, then he or she must provide 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). The regulation at 8 C.F.R. § 204.5(h)(4) allows a petitioner to submit comparable material if he or she is able to demonstrate that the standards at 8 C.F.R. § 204.5(h)(3)(i)-(x) do not readily apply to the individual's occupation.

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).

With respect to revocations, section 205 of the Act, 8 U.S.C. § 1155, states, in pertinent part, that the Secretary of Homeland Security "may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204."

Regarding revocation on notice, the Board of Immigration Appeals has stated:

> In *Matter of Estime*, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if unexplained and unrebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

Matter of Ho, 19 I&N Dec. 582, 590 (BIA 1988) (citing *Matter of Estime*, 19 I&N Dec. 450 (BIA 1987)).

By itself, the Director's realization that a petition was incorrectly approved is good and sufficient cause for the revocation of the approval of an immigrant petition. *Id.* The approval of a visa petition

vests no rights in the beneficiary of the petition, as approval of a visa petition is but a preliminary step in the visa application process. *Id.* at 589. A beneficiary is not, by mere approval of the petition, entitled to an immigrant visa. *Id.*

II. ANALYSIS

The Petitioner is a staff scientist in the Department of Pathology and Immunology at [redacted] of Medicine in [redacted] Missouri. Because she has not indicated or established that she has received 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). In revoking the petition, the Director found that the Petitioner met only two of the initial evidentiary criteria, judging under 8 C.F.R. § 204.5(h)(3)(iv) and scholarly articles under 8 C.F.R. § 204.5(h)(3)(vi). The record reflects that the Petitioner served as a peer reviewer of manuscripts for journals. In addition, she authored scholarly articles in professional publications. Accordingly, we agree with the Director that the Petitioner fulfilled the judging and scholarly articles criteria.

On appeal, the Petitioner maintains that she meets one additional criterion, discussed below. We have reviewed all of the evidence in the record and conclude that it does not support a finding that the Petitioner satisfies the requirements of at least three criteria.

> *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 regulation at 8 C.F.R. § 204.5(h)(3)(v), a petitioner must establish that not only has she made original contributions but that they have been of major significance in the field. For example, a petitioner may show that the contributions have been widely implemented throughout the field, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance in the field. Here, we will address the Petitioner's arguments on appeal and determine whether she has shown original contributions of major significance in the field consistent with this regulatory criterion.

The Petitioner contends that the Director "indicated concern that some of the recommenders who cited [her] work have received more citations than [her]."[1] Moreover, the Petitioner argues that "it is immaterial if other top experts in the field have garnered more citations than [her]; what is relevant is whether her citations place her within the top 15-20% of the field."[2] In general, the comparison of the

[1] For instance, the Director compared the Petitioner's citations (996 total citations and 223, 207, and 122 for her highest three cited articles) to [redacted] (30,683 total citations that includes individual papers receiving 2,021, 1,130, 744, and 742 citations).

[2] The Petitioner references minutes from an American Immigration Lawyers Association teleconference with the NSC on November 3-4, 2010. According to the minutes of the meeting, NSC indicated that it "does not look for proof the person is at the top 1% of the field, but rather officers are trained to look for the top 15% or 20% of the field." Unpublished agency decisions and legal opinions are not binding, even when they are published in private publications or widely circulated. *R.L. Inv. Ltd. Partners v. INS*, 86 F. Supp. 2d 1014, 1022 (D. Haw. 2000), *aff'd*, 273 F.3d 874 (9th Cir. 2001).

Petitioner's cumulative citations to others in the field, as well as her overall percentile ranking, is often more appropriate in determining whether the record shows sustained national or international acclaim and demonstrates that she is among the small percentage at the very top of the field of endeavor in a final merits determination if the Director determined he met at least three of the regulatory criteria. *See Kazarian* 596 F.3d at 1115. However, the comparison of citations to a particular scientific article may be relevant for this criterion in order to establish the overall field's general view of a contribution of major significance.[3]

Again, this criterion requires the Petitioner to establish that she has made original contributions of major significance in the field. Thus, the burden is on the Petitioner to identify her original contributions and explain why they are of major significance to the field. As indicated, the Petitioner submitted her citation history from *Google Scholar* reflecting that her highest cited article (published in *Cell*) received 223 citations, as well as her second highest article (published in *Nature Cell Biology*) garnered 207 citations. Here, the Petitioner did not articulate the significance or relevance of these numbers. Although her citations are indicative that her research has received some attention from the field, the Petitioner did not demonstrate that her citation numbers to her individual articles represent majorly significant contributions to the field.[4] Generally, citations can serve as an indication that the field has taken interest in a petitioner's work. However, the Petitioner has not sufficiently identified the specific contributions she has made through her written work, nor has she shown that her citations for any of her published articles are commensurate with contributions of major significance.

In addition, the Petitioner submits non-precedent decisions and argues that we have granted approval of extraordinary ability petitions where a petitioner has only provided "dozens of independent cites." These decisions were not published as precedents and therefore do not bind USCIS officers in future adjudications. 8 C.F.R. 103.3(c). Non-precedent decisions apply existing law and policy to the specific facts of the individual case, and may be distinguishable based on the evidence in the record of proceedings, the issues considered, and applicable law and policy. Here, the Petitioner did not show that the specific facts and circumstances of those cases are strikingly similar to those of the present case.

Further, the Petitioner provides data from Clarivate Analytics regarding baseline citation rates and percentiles by year of publication for various research fields, including molecular biology and

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Although not an issue under the evidentiary analysis, we note that that the Petitioner has not demonstrated how her claim of citations placing her within the top 15-20% establishes that she is among that small percentage at the very top of the field of endeavor. 8 C.F.R. 204.5(h)(2).

[3] *See* USCIS Policy Memorandum PM 602-0005.1, *Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator's Field Manual (AFM) Chapter 22.2, AFM Update AD11-14* 8-9 (Dec. 22, 2010), https://www.uscis.gov/policymanual/HTML/PolicyManual.html; *see also 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).

[4] *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8-9 (providing an example that peer-reviewed articles in scholarly journals that 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 the individual's work as authoritative in the field, may be probative of the significance of the person's contributions to the field of endeavor).

genetics. Moreover, the Petitioner asserts that her "papers place her in the top 1%-20%" by year of publication. The comparative ranking to baseline or average citation rates, however, does not automatically establish majorly significant contributions to the field.[5] Once again, the issue for this criterion is whether the Petitioner has made original contributions of major significance in the field rather than where her citation rates rank among others in her field. Here, a more appropriate analysis, for example, would be to compare the Petitioner's citations to other similarly, highly cited articles that the field views as having been of major significance, as well as factoring in other corroborating evidence. 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 1115. The Petitioner has not demonstrated, as she asserts, that every published article that has been cited in the top 1% - 20% resulted in an original contribution of major significance in the field.

Moreover, the Petitioner contends that she "submitted numerous examples of researcher's citations of [her] publications" and "[t]his is consistent with [her] findings being of major significance." A review of the sample articles, though, does not show the significance of the Petitioner's research to the overall field beyond the authors who cited to her work. For instance, the Petitioner provided a partial article entitled, (*Nature Genetics*), in which the authors cited to her 2011 article published in *Developmental Cell*.[6] However, the article does not distinguish or highlight the Petitioner's written work from the other cited papers or otherwise show that her article is viewed as being significantly important in the greater field. In the case here, the Petitioner has not shown that her published articles through citations rise to a level of "major significance" consistent with this regulatory criterion.

In addition, the Petitioner maintains that scientific journals reported on her research. While the record contains screenshots from publications, such as *Cell*, *Nature China*, *Cell Research*, and f1000.com[7], describing the Petitioner's recent research and findings, they do not show that her work has been considered by the field to be of major significance. In fact, the screenshots speculate on the potential impact it may have at some point in the future. For example, *Nature China* claimed that "[t]he findings . . . will provide a useful model for the study of autophagy in a wide variety of organisms." Moreover, F1000.com indicated that "[t]he finding that is a -specific factor is key for future studies in vitro and in vivo aimed at specifically assessing the physiological roles of but possibly also that of other pathways where is associated with endosomal compartments." Here, the significant nature of her research has yet to be determined or measured. Further, the sharing or reporting of recent

[5] For instance, according to the date from Clarivate Analytics, molecular biology and genetic papers published in 2017 receiving only four citations and in 2018 receiving only one citation are in the top 10%. The Petitioner has not demonstrated that papers with such citation counts have necessarily had a major, significant impact or influence in the field as evidenced by being among the top 10% of most highly cited articles according to year of publication.

[6] Although we discuss a sample article, we have reviewed and considered each one.

[7] F1000.com advertises that it "identifies and recommends important articles in biology and medical research publications," but it does not claim or show how those articles have been of major significance in the field.

studies, findings, or research in-and-of-itself is not evidence of a contribution of major significance in the field without showing how it has already greatly impacted or influenced the overall field.

Finally, the Petitioner argues that "[e]xperts worldwide have testified to the major significance of [her] original achievements and their importance to her field internationally" and specifically references letters from professor at the and professor at the Medical School.[8] While the letters praise the Petitioner for her original research, they do not demonstrate their major significance to the field. The letters recount the Petitioner's research and findings, mention their publications in journals, and indicate the citation of her work in their own papers. Although they detail the novelty of the Petitioner's research, they do not show why it has been considered of such importance and how its impact on the field rises to the level required by this criterion. The Petitioner's letters do not contain specific, detailed information explaining the unusual influence or high impact her research has had on the overall field. Letters that specifically articulate how a petitioner's contributions are of major significance to the field and its impact on subsequent work add value.[9] On the other hand, letters that lack specifics and use hyperbolic language do not add value, and are not considered to be probative evidence that may form the basis for meeting this criterion.[10] 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).

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

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 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 for individuals progressing toward the top. USCIS has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994). Here, the Petitioner has not shown that the significance of her 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)

[8] Although the Petitioner mentions two recommendation letters in her brief, we have reviewed and considered the other letters in the record.

[9] *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8-9.

[10] *Id.* at 9. *See also Kazarian*, 580 F.3d at 1036, aff'd in part 596 F.3d at 1115 (holding that 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).

of the Act. Moreover, the record does not otherwise demonstrate that 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).

For the foregoing reasons, the Petitioner has not shown that she qualifies for classification as an individual of extraordinary ability.

ORDER: The appeal is dismissed.

Cite as *Matter of Q-L-*, ID# 2224444 (AAO Mar. 4, 2019)