U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF Z-Y-

DATE: MAY 1, 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, an orthopedist, 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 Form I-140, Immigrant Petition for Alien Worker, concluding that the Petitioner had satisfied only two of the ten initial evidentiary criteria, of which he must meet at least three.

On appeal, the Petitioner submits a brief and documentation previously submitted into the record, arguing that he 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,
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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). 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).

II. ANALYSIS

A. Introduction

The Petitioner, a physician specializing in orthopedics, seeks classification as an individual extraordinary ability in the sciences. He holds a Doctor of Medicine (Surgery) from University of Science and Technology (2002). Since then, he has worked in the Orthopedics Hospital of Hospital at , in roles including principal doctor and research team leader. More recently, his research work has focused on the use of Mixed Reality (MR) technology in surgery and surgical consultation. The record indicates that the MR surgical technique uses existing CT and MRI data to reconstruct the patient's holographic image to permit real-time observation of the three-dimensional, stereoscopic MR image using MR smart glasses. The evidence shows that in 2017, the Petitioner's research team performed MR-guided hip fracture surgery, and in 2018, they performed a remote MR-assisted real-time medical consultation among three locations: Hospital, Hospital in and University in the United States.

B. Evidentiary Criteria

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). The Director found that the Petitioner met only two of the initial evidentiary

criteria, judging and scholarly articles. The Petitioner's documentary evidence indicates that he has peer-reviewed manuscripts for *Orthopedic Biological Materials and Clinical Study* and *Chinese Journal of Tissue Engineering Research*. In addition, the record contains evidence that the Petitioner has published scholarly articles in *Chinese Journal of Orthopedics*, *Osteoporosis International*, and *Clinical Neurology and Neurosurgery*. Accordingly, we agree with the Director that the Petitioner fulfilled the requirements of the judging and scholarly articles criteria. On appeal, the Petitioner maintains that he also satisfies the requirements of the criteria relating to contributions of major significance and leading or critical role. We will analyze the evidence submitted under each of these criteria below.

> *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 requirements of this criterion, a petitioner must establish that not only has he 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. The Petitioner contends that he has been "the key person, leader, or driving force" behind his team's MR research, which he claims "has been recognized in the field of expertise" as shown by "independent and objective comments and coverages . . . from major publications, media, and articles from experts in the field."

Although the Petitioner provided evidence reflecting the novelty of his research through recommendation letters praising him for his original contributions, the authors do not provide specific examples of contributions that are indicative of major significance. [redacted] Director of the Department of Surgery at [redacted] Hospital, indicates he met the Petitioner "when he was reporting to me about his mixed reality technology work," and states that the Petitioner's team used MR technology "to guide an orthopedic surgery for the first time in the world" and "led the world's first [redacted] remote fracture surgery consultation." He emphasizes that the Petitioner and those surgical events received coverage in "many mainstream medias including CCTV (China Central Television), CCTV net, People's Daily, and Xinhua.com," as well as from the [redacted] municipal and [redacted] provincial governments. He also indicates that the Petitioner edited the monograph [redacted], which examines recent advances in MR technology in different medical specialties.[1] The Petitioner further offered the preface to [redacted] authored by [redacted] Academician of the Chinese Academy of Engineering, that claims that "[the Petitioner] and other scholars used integrated reality technology in orthopedic clinics followed by other disciplines, created a precedent in this area, and gained a lot of experience."

[redacted] the deputy director of the Academic Committee of [redacted], indicates that the Petitioner conducted research on mixed reality with [redacted] laboratory as early as 2002," and mentions that in 2017 the Petitioner successfully applied MR technology to orthopedic surgery. He states that in [redacted] 2018, with the use of MR technology, "remote surgical discussions, doctor-

[1] Evidence in the record indicates that prior to the Petitioner's 2017 performance of MR-guided hip fracture surgery, a hospital in [redacted] used MR for oncological surgery and [redacted] in the United States utilized MR visual overlay technology in surgical procedures.

patient communication, and on-site surgical guidance were successfully completed in three locations." He explains that [redacted] Hospital initiated and coordinated the MR-assisted consultation, [redacted] Hospital performed the surgery, and [redacted] University monitored the teleconsultation system. He praises the Petitioner's results in having achieved "remote medical collaboration based on mixed reality, greatly enhancing the collaboration experience and efficiency, and bringing remote doctors into the local operating room." He describes the event as "one of the milestone events in orthopedic medicine."

The record also contains a letter from [redacted] Deputy Dean of the Orthopedic Hospital [redacted] Hospital, which states that the Petitioner's involvement in the 2017 MR-guided hip fracture surgery and 2018 remote MR-assisted real-time medical consultation "greatly promoted the development of Chinese medical mixed reality technology." The letter also maintains that the Petitioner's research team has published more than 20 papers in professional journals and obtained more than 20 patents in the digital medicine area. However, his assertion is not supported by corroborating documentary evidence. In addition, a patent primarily recognizes the originality of the idea, but it does not by itself demonstrate a contribution of major significance in the field.

The letters considered above primarily contain attestations of the Petitioner's status in the field without providing specific examples of contributions that rise to a level consistent with major significance. Letters that specifically articulate how a petitioner's contributions are of major significance to the field and its impact on subsequent work add value.[2] 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.[3] 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). The authors' assertions in the above-referenced letters do not explain who is using the Petitioner's research findings or otherwise describe how those findings have been implemented throughout the field. The record does not contain documentary evidence indicating whether his research findings in MR-assisted surgery and surgical consultation have been published and cited, and does not contain additional evidence indicating that other orthopedists have widely relied on his work. Without additional detail explaining his accomplishments relating to new or innovative techniques, the record does not adequately demonstrate that the Petitioner's work in the field has had a demonstrable impact on the field as a whole commensurate with a contribution of major significance.

Additionally, demonstrating ability as a skilled orthopedist is not itself a contribution of major significance; rather, the Petitioner must demonstrate that he has impacted the field of orthopedics as a whole. *Visinscaia*, 4 F. Supp. 3d at 134-35 134-135 (upholding a finding that a ballroom dancer had not met this criterion because she did not demonstrate her impact in the field as a whole). Further, while the record contains press releases and media coverage pertaining to the above-mentioned MR-assisted hip surgery and remote surgical consultation performed by the Petitioner, this evidence does not

[2] *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8-9.
[3] *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).

demonstrate that his work has influenced the broader field of orthopedics.[4] Here, the record does not include documentary evidence showing the widespread implementation of the Petitioner's work, that it has been seminal, or that it otherwise equates to an original contribution of major significance in the field. For the reasons discussed above, the Petitioner has not shown that he has made original contributions of major significance in the field.

> *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 claims that he satisfies this criterion based on his critical role for Hospital. The scope of this evidentiary criterion focuses on the relative importance of his role for distinguished organizations. In general, a critical role is one in which the petitioner contributed in a way that is of significant importance to the outcome of the organization or establishment's activities.[5] In support of this criterion, the Petitioner provided the above-mentioned letter from , who states that the Petitioner is "the principal doctor and research team leader in the of the Orthopedic Hospital of Hospital. explains that as the principal doctor in the the Petitioner is responsible for managing the ward's five traumatic orthopedic medical teams, research, staffing, teaching, doctor training, medical quality control, and decisions regarding major and complicated cases. He indicates that as the research team leader in the the Petitioner "has researched and explored medical mixed reality teaching, and conducted clinical practices in the orthopedic field."

The evidence submitted indicates that the Petitioner has been able to provide his clinical and research expertise as an orthopedist to his fellow doctors and his research team in a manner that is not expected of the average principal doctor and research team leader. The record does not establish, however, that he has performed in a critical role for Hospital as a research team leader or orthopedist. While hospital staff may consider the Petitioner's achievements to be of great benefit to the hospital, the focus of this criterion, based on the plain language of the regulation, is the Petitioner's role itself. He provided information from the official website of Hospital which indicates that it has 45 clinical and paramedical departments, 12 research institutes, and 25 National Key Clinical Specialties, including Orthopedics. The hospital has approximately 7,565 staff members, among whom 564 are medical experts with senior professional titles. It also has 8 schools and 16 teaching and research departments. The Petitioner has not provided an organizational chart or other evidence documenting how his positions fit within the general hierarchy of Hospital and how the roles and his performance in them differentiated him from its other principal doctors and research team leaders, or managerial staff. In light of the above, the documentation submitted by the Petitioner does not establish that he was of significant importance to the outcome of the preceding organization or establishment's activities to a degree consistent with the meaning of "critical role."

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[4] The Petitioner submitted additional articles about his above-referenced MR-guided events published after the date the petition was filed on April 24, 2018, including items published on the webpages www.ce.cn, www.cn-healthcare.com, www.vr.sina.com.cn, www.news.micorsoft.com, and www.xuehua.us. 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, we will not consider these additional items.

[5] *See* USCIS Policy Memorandum PM-602-0005.1, *supra*, at 10.

III. CONCLUSION

The Petitioner is not eligible because he has not submitted the required initial evidence of either a one-time achievement or documents that meet at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x). Thus, we need not fully address the totality of the materials in a final merits determination. *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.

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 his scientific accomplishments 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 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 and 8 C.F.R. § 204.5(h)(2).

For the foregoing reasons, the Petitioner has not shown that he qualifies for classification as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012). Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of Z-Y-*, ID# 2917283 (AAO May 1, 2019)