U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF X-Q-

DATE: MAY 23, 2017

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

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

The matter is now before us on appeal. With his appeal, the Petitioner submits a brief and additional evidence. The Petitioner contends that he meets the original contributions criterion and possesses the required level of expertise for this classification.

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 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).

Satisfaction of at least three criteria, however, 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 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

At the time of filing, the Petitioner was working as a research scientist in the department of physiology and biophysics at [redacted] As 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) and the scholarly articles criterion under 8 C.F.R. § 204.5(h)(3)(vi). On appeal, the Petitioner maintains that he also meets the original contributions criterion under 8 C.F.R. § 204.5(h)(3)(v). We have reviewed all of the evidence in the record of proceedings, and it does 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 reviewed articles for scientific journals such as and We also note that he has served on the editorial board of the Accordingly, the Director found that the Petitioner met this criterion, and we agree 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 submitted his publications and presentations, citation evidence for his published work, and letters of recommendation from colleagues and independent evaluators. The Director acknowledged this evidence, but found that it was not sufficient to demonstrate that the Petitioner's work constituted original contributions of major significance in the field.

On appeal, the Petitioner indicates that he has authored 14 highly influential scholarly peer-reviewed articles, four review papers, two book chapters, and numerous published abstracts, representing a "productive and exemplary record compared to that of my peers."[1] He maintains that his original contributions manifest primarily in two of his peer-reviewed articles: a 2009 article entitled ' published in and a 2013 article entitled ' published in The Petitioner asserts that these studies have been "unanimously recognized as majorly significant," and "highly cited throughout the field."

The Petitioner describes the first study as clarifying the links between and and cardiac arrhythmia. He notes that the article has received 22 citations since its publication in 2009, that his work "has had an enormous impact on the medical sector as well as on the everyday lives of

[1] With respect to the Petitioner's published work, the regulations contain a separate criterion concerning the authorship of scholarly articles in professional publications. 8 C.F.R. § 204.5(h)(3)(vi). In *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009), the court held that publications and presentations are not sufficient evidence under 8 C.F.R. § 204.5(h)(3)(v) absent evidence that they were of "major significance" in the field. In 2010, the *Kazarian* court reaffirmed its holding that we did not abuse its discretion in finding that the petitioner had not demonstrated contributions of major significance. 596 F.3d at 1122. There is no presumption that every published article or conference presentation is a contribution of major significance in the field; rather, a petitioner must document the actual impact of his article or presentation.

US citizens," and that "numerous independent studies have been influenced by this finding," though he only specifically identifies one study. Namely, the Petitioner claims that his work greatly influenced the subsequent research of [redacted] of the [redacted] He states that [redacted] article, published in [redacted] identified his work "among the most significant studies." [redacted] article, however does not directly cite the Petitioner's work; rather, it lists his article among dozens of examples of cardiology publications documenting the important role of [redacted] in the development of cardiac arrhythmia. Even within the one article noted, there is no specific discussion of the Petitioner's findings or particular references to his work such that we can conclude that his research represents an original contribution of major significance.

The Petitioner also points to a letter from [redacted] in France, in which he indicates that the Petitioner's cardiac arrhythmia study expanded understanding of a [redacted] in Chinese patients. [redacted] references several studies, including [redacted] study noted above, that cite the Petitioner's work, and he describes how the authors "significantly relied" on his findings to "perform their studies." An examination of the citing papers, however, reveals brief citations to the Petitioner's work that do not include specific discussion of the research or otherwise support [redacted] characterization of its importance to their work. He also notes that the Petitioner is "most qualified to continue making substantial progress in the years to come," and "I stand to benefit from [the Petitioner's] research and so does the U.S." These statements, however, are prospective and do not show that the Petitioner's work has already had this effect. Eligibility must be established at the time of filing. 8 C.F.R. § 103.2(b)(1)(12). Thus, [redacted] expectation regarding the possible future impact of the Petitioner's work is not evidence of his eligibility at the time of filing.

The Petitioner further maintains that his work involving the exploration of [redacted] neurons and their role in mediating puberty and [redacted] in mice constitutes a contribution of major significance. He notes that the paper articulating his findings was published in 2013 in the journal, [redacted] and that it has since garnered 32 independent citations, placing it among the top 10% most highly cited articles in the field of biology and biochemistry for that year.[2] However, while the Petitioner identifies several studies that he claims found his research "to be an indispensable contribution to the field of neuroendocrinology," the record does not support these statements. For example, the Petitioner contends that his work has been instrumental in advancing the research of [redacted] assistant professor of medicine at [redacted] states that the Petitioner's work was a "guiding resource" for other researchers and that it was "particularly useful" to his own research discussing the neuronal mechanisms governing metabolism. Yet, [redacted] article cites the Petitioner's research only once, and does not offer a detailed discussion of his findings.

Similarly, [redacted] an associate professor at [redacted] notes that the Petitioner's work on insulin and [redacted] cells was a "vital resource" and was

[2] The Petitioner submits a report from [redacted] regarding rate of citation by year and subject..

an "innovative advance in this subject area." He explains that he selected the Petitioner's study from among hundreds to be "featured" in his review. However, a review of article reveals four brief citations to the Petitioner's study and lists him as one of over 350 references. Furthermore, does not offer specific examples of how Petitioner's work has affected the field of neuroendocrinology, or has otherwise been of major significance to the field.

professor of neurobiology at the writes that the Petitioner has provided "new and pivotal information regarding the relationship between insulin signaling in neurons and its direct association with puberty initiation in mice." He also comments that he has cited the Petitioner's work in his research; however, a review of article reveals only a single brief reference and does not include details or explanations of its significance.

In addition to these specific examples, the Petitioner points to his citation record generally as evidence that he has made contributions of major significance. In support of his statement, he offers a report entitled ' The report asserts that, in order to be useful, citations must be normalized for subject category and publication year. The Petitioner claims that since his citation rate exceeds the average for his field, his research demonstrates a contribution of major significance. Although the Petitioner's work regarding neurons and their role in mediating puberty and in mice has garnered a number of independent citations and added to the pool of knowledge in his field, he has not shown that his approach has affected the field in a major way, that his method has been widely utilized, or that his work otherwise constitutes a contribution of major significance in the field.

Regarding the remaining articles the Petitioner has authored, he previously provided search results indicating fewer than ten citations for each. The Petitioner provided several examples of articles that cited to his work; however the articles do not reflect that his work was singled out as particularly important. Rather, the Petitioner's findings were utilized as background information to the authors' papers. In this case, the Petitioner has not demonstrated that the citations to his work, considered both individually and collectively, are commensurate with contributions "of major significance in the field." Additionally, while we do not question that the Petitioner's research has value, in order for an institution to accept any research for graduation, publication, or funding, it must offer new and useful information to the pool of knowledge. Not every medical researcher who performs original research that adds to the pool of knowledge has inherently made a contribution of "major significance" to the field. The record does not show that the Petitioner's research has substantially influenced the field, or otherwise rises to the level of an original contribution of major significance.

Next, the Petitioner asserts that his roles in several clinical trials represent contributions of major significance. The Petitioner submits evidence that he has participated in the and trials. Published in and the the evidence indicates that these clinical trials are important contributions to treatment and prevention of stroke and chronic heart failure. However, the Petitioner has not established that

his involvement in the trials supports a finding that they constitute his contributions. For example, the Petitioner was listed as a "coordinator" for the data center, one of many hospitals gathering information for the trial. For the clinical trial, the Petitioner is listed as "data entry." The publication documents do not mention the Petitioner as an author of the articles, nor is his name listed in the groupings of hundreds of and investigators.

On appeal, the Petitioner provides an additional letter discussing the above-named trials from of notes that the Petitioner was in a postgraduate training program and therefore, "could not be assigned paperwork as an investigator," but that he did have an MD degree and the work he contributed should be considered as an "investigator or sub-investigator." He goes on to state that the study "involved more than hundreds of hospitals, thousands of investigators, physicians, pharmacists, and nurses," and that the Petitioner's role is "equivalent to an investigator." Even if we were to agree that the Petitioner was an "investigator" in these large clinical trials, without additional evidence specifically explaining the role that the Petitioner played in each of these studies, we cannot conclude that his work represents a contribution of major significance.

As another form of evidence under this criterion, the Petitioner contends that that a number of experts have offered testimony regarding his contributions of major significance.[3] For example, a professor in the noted that the Petitioner's work "has dramatically changed the clinical guidelines in treating cardiac arrhythmia," though he does not elaborate or explain how the guidelines have changed or provide specific examples of how the Petitioner's work has influenced that change. an associate professor at the noted that she collaborated with the Petitioner on his research regarding insulin and cells. She notes that their findings "reveal that neurons do not directly mediate the critical role that insulin and leptin play in reproduction," but she did not explain the significance of this finding or offer specific examples of how it has been used or implemented in the field.

The record also contains other recommendation letters from the Petitioner's peers. Although the letters praise his work, they do not explain how the Petitioner's contributions are "of major significance in the field." Instead, the letters reference the importance of the Petitioner's works as indicated by their publication in professional journals and presentation at conferences. As discussed above, the Petitioner has not shown through his citation history or other evidence that his work, once published or presented, has been of major significance in the field. Again, while the selection of the Petitioner's articles in professional journals or at conference proceedings verifies the originality of his work, it does not necessarily reflect that his research is considered of major significance.

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

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).

The Petitioner documented his authorship of scholarly articles in professional publications such as [redacted] and [redacted] Thus, the Director concluded that the Petitioner satisfied this criterion, and the record supports that finding.

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 ten 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 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," 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. Specifically, while the Petitioner has documented publication of peer-reviewed articles that have been cited by other researchers, along with peer-review activity, the evidence does not sufficiently demonstrate that he is in the small percentage at the top of the field or show the sustained national or international acclaim required for this highly restrictive classification. Nor does the record include extensive documentation showing recognition of the Petitioner's achievements in the field.

III. CONCLUSION

The Petitioner has not demonstrated that he qualifies as an individual of extraordinary ability under section 203(b)(1)(A) of the Act. Accordingly, he has not established eligibility for the immigration benefit sought.

ORDER: The appeal is dismissed.

Cite as *Matter of X-Q-*, ID# 396401 (AAO May 23, 2017)