U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF P-O-A-

DATE: NOV. 13, 2017

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a multidisciplinary researcher focused on hydrology and ecology, 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 petition, concluding that the record did not establish, as required, that the Petitioner satisfied at least three of the regulatory criteria.

On appeal, the Petitioner resubmits documents already part of the record and asserts that he presented the requisite initial evidence, which the Director should have considered in the aggregate.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 203(b)(1)(A) of the Act describes qualified immigrants for this classification as follows:

> (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. Alternatively, 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).

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).[1] 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 an experienced scientist who has conducted research in the areas of microbial ecology and environmental science. He received his undergraduate degree in zoology at [redacted] in Nigeria; his master's degree in environmental sciences at the [redacted] in the Netherlands; and, in 2013, his Ph.D. degree in biology from the [redacted] After receiving his Ph.D. degree, he served as adjunct faculty teaching biology at [redacted] in Ohio.

The Director determined that the Petitioner had satisfied the judging and the authorship of scholarly articles criteria. 8 C.F.R. § 204.5(h)(3)(iv), (vi). Based on his participation as a peer-reviewer and the articles in the record, the record supports those findings. At issue is whether he meets a third criterion. For the reasons discussed below, we find that he has not.

A. Prior O-1 Nonimmigrant Visa

U.S. Citizenship and Immigration Services (USCIS) has approved at least one O-1 nonimmigrant visa petition filed on behalf of the Petitioner. This prior approval, however, does not preclude USCIS from denying an immigrant visa petition based on a different, if similarly phrased, standard. There are instances when Form I-140 immigrant petitions are denied after USCIS approved prior nonimmigrant petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dep't of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Brothers*

[1] This case discusses 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).

Co. Ltd. v. Sava, 724 F. Supp. 1103 (E.D.N.Y. 1989). Furthermore, our authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the Beneficiary, we would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

B. 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).

The Petitioner relies on a award at the limited to graduate students, several travel grants, a research grant as one of the top three master of science students at a fellowship that funded his studies in the Netherlands, and a research grant for a project in Nigeria where he was not the principal investigator. The Director concluded that the Petitioner had not documented that any of the above were nationally or internationally recognized prizes or awards for excellence as required. On appeal, the Petitioner contends that the research grant in 2007 funded work that produced important results and represented a large amount of money at the time. He then lists his other awards and maintains that he has met his burden of demonstrating that they are nationally or internationally recognized. The 2007 research grant names a professor and a principal investigator ahead of the Petitioner, an undergraduate zoology student at the time, and another co-researcher. The record contains no evidence that the grant was a prize or award issued to the Petitioner in recognition of his excellence in the field of hydrology. Rather, it funded future research, which had yet to produce any results when the university distributed the grant.

The Petitioner has not offered any evidence to support his position that the remaining awards are nationally or internationally recognized beyond the entities that issued them. As the Director noted, they are all limited to novices in the field. For example, the advised that their travel grants assist researchers in their educational pursuits. The record contains no published material in the trade or general media reporting the award selections or other similar evidence of their recognition in the field. Accordingly, the Petitioner has not met his burden by corroborating that his awards are nationally or internationally recognized prizes or awards for excellence.

> *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 documented his membership in and the at the student level. requires "noteworthy achievements." It interprets that phrase, however, as including authorship of two papers, one of which can be substituted with an earned doctoral degree. requires certain academic achievements;

members must have completed a certain number of credits, hold a specified grade point average, and demonstrate a record of leadership and service. Student members of must be fully matriculated, studying microbiology, and interested in the objectives of the society. On appeal, the Petitioner limits his discussion to and repeating their membership requirements. He has not established that earning a Ph.D. degree and authoring one paper equates to an outstanding achievement in a research occupation. Nor has he shown that grade point average and leadership responsibilities in graduate school are outstanding achievements in the field. Finally, the record lacks evidence that membership in either organization is judged by national or international experts. Thus, the Petitioner has not satisfied this criterion.

> *Published materials 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).

During the proceeding before the Director, the Petitioner presented an interview with him that appeared in the Nigerian The Director concluded that the Petitioner had not supported the assertion that the paper constitutes major media. On appeal, he maintains that it has a circulation of 100,000 but offers no corroboration such as distribution and circulation statistics from a reliable source. Regardless, the article appeared in that publication in 2016, four months after the Petitioner filed the petition. He 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). The Petitioner has not demonstrated that he met this criterion as of the date of filing.

> *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 relies on several letters to meet this criterion. Five of the letters are from the faculty, two are from individuals who explain that they knew the Petitioner at and one is from a coauthor during his time at The record also contains a letter from a senior researcher who studies medicinal plants at the in South Africa. The Petitioner affirms that knows him "through his reputation." While confirms that he has never collaborated with the Petitioner, according to his curriculum vitae, he attended an undergraduate program at with the Petitioner from 1995 through 1999. We have read and considered all of these letters and discuss a representative sample below.

a professor of biology at the discusses the Petitioner's work in his laboratory there. Specifically, he showed that "terrestrial plays an important role in stream metabolism" and "elucidated the microbial community responsible for the initial utilization of terrestrial in streams." affirms that the Petitioner presented these results, which was pending publication. He does not explain how it has already impacted the field beyond adding to the general pool of knowledge. another professor at the

maintains that this work "has important implications," but also does not specify how it has already influenced the field.

next describes the Petitioner's research confirming the presence of unusual fatty acids within the membranes of lipid chytrid fungi published in While contends that this result "underpins the use of these fatty acids as biomarkers for chytrid fungi in environmental studies," the record lacks letters from independent researchers applying this data in their own efforts or evidence of citations. asserts that no one else has produced these results. While we do not contest that his research is original, there must be some demonstrable level of impact in the field to constitute a contribution of major significance. an associate professor of neuroscience at the and former fellow classmate in Nigeria, posits that this study offers "the potential of phospholipid fatty acid biomarkers for use in environmental studies." an expert in a different field, does not suggest he is pursuing such work.

Finally, states that he applied the Petitioner's experimental design for stream networks within his current endeavor. Thus, the Petitioner's former supervisor and mentor has built upon their past collaboration. That activity, however, does not demonstrate a level of impact in the field consistent with a contribution of major significance.

addresses the Petitioner's work as a research editor and biostatistician for projects. He does not suggest that these efforts have impacted the field and it falls outside the Petitioner's current ecological focus. concludes his letter with general praise of the Petitioner's ecological studies.

an associate professor at describes their collaboration while the Petitioner was at and associated with the in Switzerland. While affirms that their coauthored article has garnered over 35 citations, he does not identify specific contributions made by the Petitioner within that work or offer examples of how it is being implemented in the field. notes that he himself is a well-cited author with over 1,000 citations. Regardless, the Petitioner did not provide corroborating evidence to demonstrate that his citation record indicates his work has been of major significance to the field.

Finally, praises the Petitioner but does not affirm any influence on his own pursuits. As noted above, his focus is medicinal plants and he does not clarify his expertise to evaluate the Petitioner's area of research. reiterates that the Petitioner's results with leaf litter have important implications, but the issue is whether the Petitioner has already impacted the field. does name three articles that either utilized the Petitioner's experimental design of spatial network analysis or built upon his study of mite species on the floor of a rainforest. The Petitioner, however, did not offer pages from these articles showing the extent of their reliance on this work or letters from the authors of those articles. As noted above, the record contains no corroboration regarding the number of citations overall. For all of the reasons discussed above, while the letters confirm that the Petitioner's immediate circle of colleagues appreciate his skills and results, the record when considered as a whole

does not demonstrate a level of impact in the field consistent with a contribution of major significance. He therefore has not met this criterion.

> *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).

The Petitioner maintains that he meets this criterion as a student magazine editorial coordinator for [redacted] He discusses the important services the institution provides and contends that he "served a critical role in publicizing the institute's activities and furthering its educational mission." The Petitioner submits several pages from the [redacted] publication '[redacted]' These pages, however, do not list an editor or name the Petitioner. Moreover, we will not presume a qualifying role from the title alone. The record does not contain a letter from anyone at [redacted] confirming his position there and describing his duties. Accordingly, he has not satisfied this criterion.

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.

ORDER: The appeal is dismissed.

Cite as *Matter of P-O-A-*, ID# 639713 (AAO Nov. 13, 2017)