U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF P-K-

DATE: NOV. 14, 2019

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a nanoscientist, seeks classification as an individual of extraordinary ability in the field of science. *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 ten initial evidentiary criteria, of which he must meet at least three.

On appeal, the Petitioner submits a brief and asserts that he meets 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).

II. ANALYSIS

The Petitioner, a post-doctoral scholar in physics, holds a PhD in physics from the University of [redacted] At the time of filing he worked at the University of [redacted] conducting research on quantum dot materials. Because he has not indicated or established that he has received a major, internationally recognized award, the Petitioner 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 the Petitioner met the regulatory criteria for judging at 8 C.F.R. § 204.5(h)(3)(iv) and scholarly articles at 8 C.F.R. § 204.5(h)(3)(vi). The record reflects that the Petitioner served as a peer reviewer of manuscripts for journals such as *Materials Letters*, *Materials Chemistry and Physics*, and *Applied Optics*, among others. In addition, it shows that he has authored scholarly articles in professional publications such as the *Indian Journal of Pure & Applied Physics*. Accordingly, we agree with the Director that the Petitioner fulfilled the judging and scholarly articles criteria.

On appeal, the Petitioner asserts that he meets a third criterion, discussed below. We have reviewed all of the evidence in the record and conclude that it does not support a finding that he 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 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.

In his decision, the Director noted that the record included several recommendation letters discussing the beneficiary's research in the field. He found, however that this correspondence lacked "specificity regarding how his achievements have affected the field or… are being reproduced in the field." The Director further determined that the Petitioner "had not established how other researchers emulate his techniques or have *widely* applied his research results." (emphasis in original.)

On appeal, the Petitioner argues that the Director reached his conclusion in error. Specifically he asserts that the Director incorrectly determined that the letters lacked sufficient specificity, did not review the record in its entirety, and did not consider the letters in concert with the corroborating research articles provided in the record.

Here, as noted by the Director in his decision, the record contains independent advisory letters providing detailed descriptions of the Petitioner's original contributions and highlighting each letter writer's citations to his work, as well as those of other researchers.[1] For example, [redacted] group leader at the [redacted], discusses the Petitioner's research in "the [redacted] characterization of semiconductor nanostructures." He explains that in a 2013 *Nanoscale* paper, he and his group "cited [the Petitioner's] research in order to demonstrate that electronic transitions are able to be distinguished in the energy band spectrum." [redacted] further notes that "many other researchers have cited [the Petitioner's] work from this project" and concludes, "this level of impact is indicative of a highly skilled innovator."

In a second letter, [redacted] Investigator at the University of [redacted] states that the Petitioner has "made extensive contributions" in the "study of high [redacted] materials." [redacted] notes that the Petitioner published the results of his research "in *Material Letters* and the *Indian Journal of Engineering & Materials Science*," and opines that "these papers have had a visible impact on research taking place throughout the field," and that he was one of the researchers applying this work. He explains that he and his coauthors "applied [the Petitioner's] original [redacted] for our own research, published in *Sensors and Actuators B: Chemical.*" [redacted] also notes that the Petitioner's work was cited in a book chapter, as well as another published article. He indicates that the frequency of the Petitioner's work to date shows that "he has come to be seen as a progressive, reliable expert by the entire discipline."

In her independent advisory letter, [redacted], a researcher at the [redacted] describes the Petitioner as "a preeminent nanoscientist whose deployment of [redacted] has been pivotal for the scientific characterization of nanowires and [redacted] growth methodologies." She describes two papers, one by [redacted] in the 2011 AIP conference proceedings, and one by [redacted] in a 2015 issue of *Nanotechnology*. [redacted] notes that the former "directed readers to [the Petitioner's] prior work for evidence that [redacted] performance yields information about the underlying nanowire bandgap structure." She concludes that "[t]he efficacy with which [the Petitioner] was able to characterize nanowire structures let [redacted] to adopt the same technique in their study." Regarding the latter, [redacted] notes that the authors "invoked [the Petitioner's] well-known [redacted] study to explain their observations" and that this study "again shows that [the Petitioner's] international peers use his work

[1] Although we do not address each letter, we have reviewed the record in its entirety.

as a benchmark." With respect to her own research, [redacted] notes that in a 2009 *Journal of Nanomaterials* study, she and her coauthors "demonstrated the growth, structural characterization, and conductivity evaluation of [redacted] nanowires grown using [redacted]," and "built upon [the Petitioner's] technique by incorporating [redacted] directly into the sidewalls of the nanowires." She notes that his work "was an important precursor to our own, which is why we referenced his research in our introductory section."

While these letters show how the Petitioner's research has been critical for each of these researchers, they do not explain or demonstrate how the Petitioner's contributions have been majorly significant to the overall field.[2] Letters that specifically articulate how a petitioner's contributions are of major significance to the field and its impact on subsequent work add value.[3] 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.[4] 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). The authors' assertions in the above-referenced letters do not explain how the Petitioner's research findings have been implemented throughout the field. Without additional detail explaining his accomplishments as they relate to new or innovative techniques or findings, the letters do not establish that the Petitioner's work has widely impacted the field such that it rises to the level of major significance.

Other independent advisory letters in the record speculate on the potential influence and on the possibility of the Petitioner's contributions being majorly significant at some point in the future. For example, [redacted] associate professor of physics at the University of [redacted] references the Petitioner's work with [redacted], noting that he is working with the Petitioner in "developing highly complex approaches for optimizing and applying these materials" and that this work "is extremely exciting in terms of its implications for the creation of … [redacted]" [redacted] AC, head of the [redacted] at the [redacted] National University, also discusses the Petitioner's work on [redacted] (QDs)" and states that it is "a landmark discovery for the field with substantial implications for making [redacted] QDs useful in a wide variety of industrial and technological applications." The record also includes correspondence between the Petitioner and others indicating interest in implementing his research. While these letters show promise in the Petitioner's work, they do not establish how his work already qualifies as a contribution of major significance in the field, rather than prospective, potential impacts.

The Petitioner argues on appeal that the Director erred in citing a lack of evidence corroborating the assertions made in these research letters regarding the implementation of his work. A review of the articles in the record citing to the Petitioner's research does not show the significance of the Petitioner's contributions to the field beyond that to the authors citing to his work. For example, in

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[2] *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), http://www.uscis.gov/laws/policy-memoranda; *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).

[3] *Id.*

[4] *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).

the 2013 article [redacted], (*Nanoscale)* referenced in [redacted]'s letter, the Petitioner's work is one of three articles cited to in support of the statement that '[redacted] is corroborated by spatial mapping of the [redacted] (SPCM)…" In the 2009 article mentioned above by [redacted] '[redacted]' the Petitioner's research also is one of a grouping of articles cited to in the text. Other articles, such as [redacted] (*Semiconductor Science and Technology*) and '[redacted]' (*Nano Letters)* cite to the Petitioner's 2009 *Applied Physics Letters* article. We note, however, that none of these articles distinguish or otherwise identify the Petitioner's research beyond these citations.

The record also includes partial copies of book chapters in which the Petitioner's work is cited.[5] For instance, '[redacted] directly references the Petitioner and his findings published in a 2010 *Material Letters* article. However, this chapter only describes his research, and does not discuss how these findings have widely impacted or otherwise been used in the field. '[redacted] cites to the Petitioner's 2011 *Applied Physics Letters* article, but does not otherwise distinguish his work from that of others.

The aforementioned articles and book chapters corroborate statements made in the aforementioned independent advisory letters regarding the authors' use of the Petitioner's research in their own work, as well as showing that others in the United States and abroad, were able to build upon the Petitioner's work and apply it to their own research. However, these publications do not demonstrate that the Petitioner's work has impacted or widely influenced the field of nanoscience such that it constitutes a contribution of major significance. The fact that the Petitioner has published articles that other researchers have referenced is not, by itself, indicative of a contribution of major significance. Publications 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.

On appeal, the Petitioner argues that the citation statistics in the record demonstrate that "one of [his] articles ranks among the top 10% most cited in his field for its year of publication." He claims that this demonstrates "strong evidence of the major significance of his research, as confirmed by bibliometrics." The record includes a Google Scholar printout of the Petitioner's publications reflecting that this article was cited 55 times, as well as a Clarivate Analytics report titled "InCites Essential Science Indicators" stating that articles published in the field of materials science in 2009 and cited 48 or more times "fall in the 10% percentile" of papers in this field. However, the comparative ranking of a single article to baseline or average citation rates does not automatically establish that this original contribution has been of major significance in the field. A more appropriate analysis, for example, might 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.

[5] While we discuss only a sampling of these chapters here, we have reviewed all chapters present in the record.

For the reasons discussed above, the Petitioner has not met the burden of demonstrating that he meets this criterion.

III. CONCLUSION

The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than those progressing toward the top. USCIS has long held that even athletes performing at the major league level do not automatically meet the statutory standards for classification as an individual of "extraordinary ability." *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994). Here, the evidence does not establish that the Petitioner has received a major, internationally recognized award or meets three of the ten evidentiary criteria. As a result, we need not provide the type of final merits analysis referenced in *Kazarian*, 596 F.3d at 1119-20. Nevertheless, we find the record insufficient to demonstrate that he has sustained national or international acclaim and is among the small percentage at the top of his field. *See* section 203(b)(1)(A)(i) of the Act and 8 C.F.R. § 204.5(h)(2).

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, the petitioner bears the 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 P-K-*, ID# 4633172 (AAO Nov. 14, 2019)