U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 4708049

Date: NOV. 20, 2019

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Extraordinary Ability)

The Petitioner, a researcher and econometrician, seeks classification as an alien of extraordinary ability. *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 Petitioner had satisfied only two of the initial evidentiary criteria, of which he must meet at least three. In addition, the Director found that the Petitioner did not establish that he will continue to work in his area of extraordinary ability.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 203(b)(1) 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 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).

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).

II. ANALYSIS

The Petitioner indicates employment as a lecturer in the statistics department at the University of [redacted] Nigeria. 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).

In denying the petition, the Director determined that the Petitioner fulfilled two of the initial evidentiary criteria, 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 thesis examiner. In addition, the Petitioner has authored scholarly articles in professional publications. Accordingly, we agree with the Director that he the Petitioner fulfilled the judging and scholarly articles criteria.

On appeal, the Petitioner asserts that he meets two additional evidentiary criteria, discussed below.[1] After reviewing all of the evidence in the record, we conclude that the record does not support a finding that the Petitioner satisfies the requirements of at least three criteria.

> *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 claims eligibility for this criterion based on membership with the American Statistical Association (ASA), International Biometric Society (IBS), Nigeria Statistical Society (NSS), International Statistical Institute (ISI), and Nigeria Statistical Association (NSA). In order to satisfy this criterion, the Petitioner must show that membership in the association is based on being judged by recognized national or international experts as having outstanding achievements in the field for which classification is sought.[2]

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[1] The Petitioner does not address or submit evidence regarding his intent to continue to work in the United States in his area of extraordinary ability.

[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* 6 (Dec. 22, 2010), https://www.uscis.gov/policymanual/HTML/PolicyManual.html (providing an example of admission to membership in the National Academy of Sciences as a Foreign Associate that requires individuals to be nominated by an academy

Although the Petitioner documented his membership with ASA, IBS, ISI, and NSA, he did not demonstrate his membership with NSS. While the record contains a certificate evidencing his participation at a conference by NSS, the Petitioner did not show his membership with NSS. Notwithstanding, the Petitioner did not establish that membership with any of the associations requires outstanding achievements, as judged by recognized national or international experts.

As it relates to ASA, the Petitioner provided screenshots from amstat.org reflecting that "ASA membership is available to residents of economically developing countries as designated by the World Bank." In addition, the Petitioner submitted ASA's constitution indicating that it "may have one or more categories of members, as defined in Article I of the By-Laws." However, the Petitioner did not present the by-laws showing the membership requirements for any of the categories.[3] Moreover, the Petitioner did not demonstrate that being a resident of an economically developing country is tantamount to outstanding achievements as required by this regulatory criterion. Furthermore, the Petitioner did not establish that outstanding achievements for membership are judged by recognized national or international experts.

Regarding IBS, the Petitioner submitted screenshots from biometricsociety.org reflecting that IBS "welcomes as members biologists, mathematicians, statisticians, and others interested in applying similar technologies." However, the screenshots do not indicate the membership requirements for IBS; rather the screenshots highlight the benefits of membership, such as accessing journals and newsletters. Further, the Petitioner did not demonstrate that being in a particular profession equates to an outstanding achievement. Moreover, the Petitioner did not show that recognized national or international experts judge the outstanding achievements for membership.

As it pertains to NSS, the Petitioner offered screenshots from nss.com reflecting that professional membership requires "a degree in statistics and related fields." However, the Petitioner did not show that possessing a college degree represents an outstanding achievement. In addition, the screenshots do not indicate whether membership with NSS is judged by recognized national or international experts.

Finally, the Petitioner did not support the record with evidence showing the membership requirements for NSI and NSA. Thus, the Petitioner did not demonstrate that membership with NSI or NSA requires outstanding achievements, as judged by recognized national or international experts.

Accordingly, the Petitioner did not establish that he fulfills this criterion.

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member, and membership is ultimately granted based upon recognition of the individual's distinguished achievements in original research).

[3] *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 7 (indicating that associations may have multiple levels of membership, and the level of membership afforded to the alien must show that in order to obtain that level of membership, the alien was judged by recognized national or international experts as having attained outstanding achievements in the field for which classification is sought).

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 record contains evidence of his citations and conference participation. In addition, the Petitioner contends that he submitted eight reference letters to show his eligibility for this criterion. 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.[4] 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.

As it relates to the citation of his work, the record reflects that the Petitioner submitted evidence from *Google Scholar* reflecting that his two highest cited articles (*Global Journal of Science Frontier Research* and *Journal of Economics and Sustainable Development*) received six citations each.[5] Again, this criterion requires the Petitioner to establish that he has made original contributions of major significance in the field. Thus, the burden is on the Petitioner to identify his original contributions and explain why they are of major significance in the field. Generally, citations can serve as an indication that the field has taken interest in a petitioner's research or written work. However, the Petitioner has not sufficiently shown that his citations for any of his published articles are commensurate with contributions of major significance. Here, the Petitioner did not articulate the significance or relevance of the citations to his articles. Although his citations are indicative that his research has received some attention from the field, the Petitioner did not demonstrate that his citation numbers to his individual articles represent majorly significant contributions in the field.[6]

Likewise, the Petitioner provided evidence of his attendance and participation at conferences but did not demonstrate how they resulted in contributions of major significance in the field. 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. Here, the Petitioner has not established that publication in a journal or presentation at a conference alone demonstrates a contribution of major significance in the field.

Regarding the Petitioner's recommendation letters, they generally recount his career and professional accomplishments without providing specific information detailing how his contributions have been of major significance in the field. For instance, [redacted] claimed that the Petitioner "produced different models from his researches which are published in reputable journals," and "the development of these models further reveals that [he] is a researcher with unusual skills and usage of his models further underscores his overall influence in [the] academic world."[7] Here, [redacted] did not explain how the Petitioner's publication in journals have significantly influenced

[4] *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8-9 (finding that although funded and published work may be "original," this fact alone is not sufficient to establish that the work is of major significance).

[5] The Petitioner's remaining articles received five citations or less.

[6] *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).

[7] Although we discuss a sampling of letters, we have reviewed and considered each one.

the field in a major way. Furthermore, [redacted] did not elaborate on his reference to the "usage" of the Petitioner's models, such that the field has widely adopted or applied his models.

Likewise, [redacted] indicated that the Petitioner "has made significant contributions to the field of econometrics having published in diverse local and international journals in the field." Again, [redacted] did not articulate how the Petitioner's publications or findings have impacted the field. Repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.).

Moreover, the Petitioner submitted letters that speculate on the potential influence and on the possibility of being majorly significant at some point in the future. For instance, [redacted] asserted that the Petitioner's "research will [] bring outstanding impacts in the areas of crime rate modeling, economy modeling, accident rates modeling, and health related analysis," and he "will help save lives, properties in the U.S. and throughout the world through the new cutting edge research/work he will do to help ensure providing data driven information to save citizenry both nationally and internationally." While the letter shows promise in the Petitioner's work, it does not establish how his work already qualifies as a contribution of major significance in the field, rather than prospective, potential impacts. The significant nature of his work has yet to be determined or measured.

Here, the Petitioner's letters do not contain specific, detailed information explaining the unusual influence or high impact his research or work 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.[8] 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.[9] 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 he 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.

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

[9] *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 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 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) 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 reasons discussed above, the Petitioner has not demonstrated his eligibility as an individual of extraordinary ability.[10] The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.

[10] As the Petitioner has not demonstrated his extraordinary ability under section 203(b)(1)(A)(i) of the Act, we need not consider whether he seeks to enter the United States to continue to work in his area of extraordinary ability under section 203(b)(1)(A)(ii) of the Act.