U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF M-S-

DATE: OCT. 31, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a postdoctoral researcher, 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 shown that she met only two of the ten initial evidentiary criteria, of which she must meet at least three.

On appeal, the Petitioner submits additional evidence and contends that she meets three criteria.

Upon *de novo* review, we will sustain 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,
>
> (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 of evidence listed at 8 C.F.R. § 204.5(h)(3)(i)-(x) (including items such as awards, memberships, and published material in certain media).

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

The Petitioner is a postdoctoral researcher in the field of materials science. As she has not established that she has received a major, internationally recognized award, she must satisfy at least three of the ten criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x).

A. Evidentiary Criteria

In denying the petition, the Director found that she met two criteria: participation as a judge of the work of others under 8 C.F.R. § 204.5(h)(3)(iv) and authorship of scholarly articles under 8 C.F.R. § 204.5(h)(3)(vi). We find that the evidence in the record sufficiently supports these conclusions based on her work as a peer reviewer and her authorship of scholarly articles.

The Director found that the Petitioner had not established that she met the criterion requiring original contributions of major significance under 8 C.F.R. § 204.5(h)(3)(v), noting that her citation history does not reach the level of citations, numbering in the thousands, that the top scientists in the field have attained. On appeal, the Petitioner asserts that her citation history should not be the determining factor of the significance of her contributions. We agree. We note that the Director's comparison of her citations to those of other scientists or researchers in her field is generally not appropriate in determining whether she has made original contributions of major significance in the field. Instead, the evaluation of her citations to others in her field is more relevant in a final merits determination demonstrating her sustained national or international acclaim, that she is one of the small percentage at the very top of the field of endeavor, and that her achievements have been recognized in the field through extensive documentation. *See* 8 C.F.R. § 204.5(h)(2)-(3).

While the comparison of one's citation history to others in the field is more relevant to the final merits determination as to whether she has sustained acclaim, the substance of the findings noted by other researchers who cite the Petitioner is relevant to whether her contributions are of major significance in the field. With respect to contributions in cancer research, [redacted], Associate Professor of Pharmaceutical Sciences at the [redacted] and a specialist in drug delivery for cancer treatments, states that "one of [the Petitioner's] most prolific works has been her investigation of nano- and micro-structured materials for their use in targeted anti-cancer drug delivery." He references the influence of her research by stating, "After learning of [the Petitioner's] strategies to improve cancer drug delivery with gold nanoparticles, [redacted] cited her work as a significant source of information in their own study of gold nanoparticles." [redacted] adds, "These scholars used [her] curcumin-conjugated gold nanoparticle method, noting its progress in improving targeted cancer therapy." He states that other researchers have relied upon her research regarding "her conjugation of water soluble curcumin to metallic nanoparticles, and how this process enhances curcumin-based cancer treatment opportunities."

The record reflects that other researchers have further developed these findings. For example, the authors in an article published in the [redacted] journal extensively cite the Petitioner's findings regarding hyaluronic acid conjugate to enhance curcumin delivery. In one paragraph they discuss the Petitioner's research "to improve the solubility and stability of curcumin," noting that "[i]ncreasing the amount of conjugated curcumin would lead to enhanced therapeutic potency towards cancer cells."

[redacted], Professor in the Department of Pharmaceutical Sciences at the [redacted] similarly states that other researchers "have cited [the Petitioner's] development of gold nanoparticles with a hyaluronic acid-curcumin and a folic acid-polyethylene glycol conjugate, noting the efficiency of these nanoparticles' targeting abilities in comparison to free curcumin." He then adds that these researchers "used her developments to design a cancer drug delivery platform with polysaccharide-gold nanocluster supramolecular conjugates." He also states, [redacted] have adopted [the Petitioner's] methods in order to investigate the degradation kinetics of their hyaluronic acid-based nanogel drug conjugates." He further asserts, "Such direct uses of [her] research highlight the novelty and uniqueness of her findings."

Regarding this publication from [redacted] counsel states that "this group utilized [her] results in the introduction of their work, and they modified her hyaluronic acid-curcumin conjugate micelle slightly for use [in] *in vivo* applications." This publication in the record indicates that the final treatment "resulted in up to 13-fold tumor suppression, making this nanodrug a potential candidate for cancer prevention and therapeutic treatment." Counsel further asserts, "This group used [her] hyaluronic acid-curcumin conjugate as a foundational element of their work." We find that this assertion is supported by the evidence in the record. Accordingly, the Petitioner has established that her cancer research is of major significance and is being utilized by other researchers to design cancer drug delivery mechanisms and to improve the ability of delivering curcumin to target cancer cells.

We find that the record establishes that the Petitioner meets the contributions of major significance criterion through her cancer research. Accordingly, as the Petitioner meets three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3), we will evaluate the totality of the evidence in the context of the final merits determination below.

B. Final Merits Determination

As the Petitioner has submitted the requisite initial evidence, we will evaluate whether she has demonstrated, by a preponderance of the evidence, that she has sustained national or international acclaim and is one of the small percentage at the very top of the field of endeavor, and that her achievements have been recognized in the field through extensive documentation. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2)-(3); *see also Kazarian*, 596 F.3d at 1119-20. In this matter, we determine that the Petitioner has shown her eligibility for this classification.

Under judging, the record reflects that the Petitioner has received and completed independent requests to review a substantial number of manuscripts for renowned professional publications. We find the Petitioner's judging experience, together with the achievements described below, to be consistent with a determination that she is among the small percentage at the top of her field of endeavor. *See* 8 C.F.R. § 204.5(h)(2).

For original contributions of major significance, [redacted] states that the Petitioner's research "has been essential to that of many independent scholars, and has valuably added to materials science research in the biomedical disciplines." He cites the Petitioner's development of magnetic and gold nanoparticles "in order to increase the amount of cargo delivered to targeted sites of cancer and to increase the length of delivery." As discussed above, the record demonstrates that she has further developed this area of expertise and that many other researchers have used her research as a foundation for their own important breakthroughs.

Beyond her cancer research, the Petitioner has also received acclaim for her work with intra-ocular lenses. The record contains two letters from [redacted] Assistant Professor for the Department of Craniofacial Biology at the [redacted] The first letter states that the Petitioner "implemented basic photopolymerization techniques to develop multiple cost-effective polymer IOL formulations" with an inexpensive production method that is "immensely valuable to the medical and eye care industries." [redacted] then states that the [redacted] filed a patent on her research and [redacted] "has expressed interest in commercializing the IOL formulations."

The second letter from [redacted] further states that the Petitioner "played an instrumental role in the development of patented copolymer formulations for ophthalmic lenses which has since received an industrial grant from [redacted] a subset of [redacted] and a leader in eye care solutions." [redacted] further states that her contribution "was pivotal in obtaining further funding towards developing the IOLs" and that "[h]er efforts have been instrumental to the success of this project, and the grant from [redacted] facilitated further studies into polymer-based IOL lenses to ultimately benefit patient health."

Obtaining patents and research funding are positive indications of her sustained acclaim and help demonstrate, together with the other evidence in the record, that she has risen to the top of her field.

Regarding scholarly articles, the record contains evidence that the Petitioner has authored a considerable amount of articles that were published in distinguished professional journals. As authoring scholarly articles is inherent to scientists and researchers, the citation history or other evidence of the influence of the Petitioner's articles is an important indicator of the impact and recognition that her work has had on the field and whether such influence has been sustained. In this case, the Petitioner has offered a report reflecting hundreds of citations to her published work from 2010 to the present, as well as evidence demonstrating that the rate at which her articles have been cited is very high for her field. The record also reflects that she continues to publish scholarly articles in her field. Overall, the number of research articles she has coauthored and their unusually high rate of citation are commensurate with being at the very top of the field.

When considered in the aggregate with the evidence discussed above, the Petitioner has demonstrated that her achievements are reflective of a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990). We conclude that the record supports a finding that the Petitioner is among the small percentage at the top of her field of endeavor with sustained national or international acclaim. *See* 8 C.F.R. § 204.5(h)(2)-(3).

III. CONCLUSION

The Petitioner has shown that she meets at least three of the evidentiary criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x). She has also demonstrated sustained national and international acclaim and that her achievements have been recognized through extensive documentation. She therefore qualifies for classification as an individual of extraordinary ability.

ORDER: The appeal is sustained.

Cite as *Matter of M-S-*, ID# 1645697 (AAO Oct. 31, 2018)