U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF P-K-S-

DATE: OCT. 31, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a research scientist, 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 record did not establish, as required, that the Petitioner has received a major, internationally recognized award or met the requirements of at least three of ten evidentiary criteria.

On appeal, the Petitioner submits additional evidence and asserts that he meets a third evidentiary criterion in addition to the two that the Director found him to meet. He also asserts that he has sustained national and international claim in the field of microbiology, and that he is one of the small percentage of researchers at the very top of this field.

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,

(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 (USCIS) 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

The Petitioner is a research scientist working in the field of microbiology. The Director found that he met two of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), relating to judging the work of others and authoring scholarly articles. On appeal, the Petitioner asserts that he also meets the evidentiary criteria relating to original contributions of major significance to the field. After reviewing all of the evidence in the record, we find that while the Petitioner does meet the requisite three evidentiary criteria, he has not established that he enjoys sustained national or international acclaim.

A. Evidentiary Criteria

> *Evidence of the individual's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specialization for which classification is sought.* 8 C.F.R. § 204.5(h)(3)(iv)

The Petitioner submitted evidence that he has acted as a peer reviewer on numerous occasions for several scientific journals. We therefore agree with the Director that the Petitioner meets this criterion.

> *Evidence of the individual'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 support of his claim under this criterion, the Petitioner provided several types of evidence, including reference letters from collaborators, peers and other experts in his field. The Director acknowledged the submission of nine reference letters in her decision, but did not provide a detailed analysis, instead concluding that "without additional, specific evidence... these letters of recommendation are not sufficient to establish that you meet this regulatory criterion."[1] On appeal, the Petitioner explains that the reference letters were submitted to corroborate other evidence of his contributions. We will consider the letters as such below.

The Petitioner's response to the Director's request for evidence (RFE) first focused on the contribution made by his use of mouse models to study the Zika viruses' effect on the eyes. of who heads the lab in which the Petitioner currently works, states in his letter of June 28, 2017, that the Petitioner was "the first to use animal models that closely mimic the retinal pathology in humans" to study the Zika virus in this way. of the who indicates that she worked with the Petitioner as a co-editor, agrees that the Petitioner "created the first animal model susceptible to the virus, using mice." The Petitioner asserts that the success and impact of the Petitioner's animal modelling skills is demonstrated by an agreement with a major pharmaceutical company to use a different set of mice developed by the Petitioner in preclinical trials of a drug it has developed. In addition, the Petitioner submitted evidence of a request from a researcher at another institution, and submits a contract and emails to support these claims. A second letter from also confirms these projects which employ the mice the Petitioner developed. However, while this evidence indicates that the Petitioner's work in this area is original and has had direct influence on these specific research projects, it does not support a finding that it has impacted the overall field of microbiology to the extent that it could be considered a contribution of major significance.

[1] See Chapter 22.2 of the USCIS Adjudicator's Field Manual (AFM): "USCIS officers should take into account the probative analysis that experts in the field may provide in opinion letters regarding the significance of the alien's contributions in order to assist in giving an assessment of the alien's original contributions of major significance. That said, not all expert letters provide such analysis. Letters that specifically articulate how the alien's contributions are of major significance to the field and its impact on subsequent work add value. Letters that lack specifics and simply use hyperbolic language do not add value, and are not considered to be probative evidence that may form the basis for meeting this criterion."

In addition, the Petitioner asserts that his research conducted using the mice has had an impact on the work of other researchers in the field of microbiology, and specifically those focusing on infections of the eyes caused by the Zika virus and other organisms. writes that the Petitioner's research and agrees, writing that the Petitioner's "contributions to the greater understanding of Zika viral replication in an ocular environment greatly benefit the global efforts to fighting this virus and creating an antiviral therapy." In addition, (Australia) states that the Petitioner's Zika virus research "has done much to clarify the pathogenesis of this vision-threatening disease," and that it "is serving as an important launching point for the investigations of a number of research groups internationally, including my own." The Petitioner also submitted evidence of the number of citations to the Petitioner's published work in this area, as well as data suggesting that these citations occurred at an unusually high rate.[2] The record shows that this work was one of eight articles cited in a letter to the editor of the *European Journal of Internal Medicine* calling for notification to eye banks of possible Zika infection through corneal transplants, but does not include information regarding the influence this journal has in the field, or that the recommendation based in part on the Petitioner's paper was novel at the time or was later acted upon.

The Petitioner also asserts that his research on to treat this condition is an original contribution to the field which meets the standards of this criterion. This work led to a patent application on which the Petitioner is named as one of three inventors, and the record includes letters from several experts who have indicated that they and others have used his results and methods in their own research. For example, of the (Australia) writes in her letter that the Petitioner's paper on this subject, published in *Antimicrobial Agents and Chemotherapy*, "was critical to the successful completion of my own work." points out a review article published in 2014 which lists the Petitioner's work among ten studies "illustrating some promising non-pharmaceutical anti-biofilm strategies." In addition, Medical Branch discusses several of the Petitioner's published papers regarding endopthalmitis, and concludes that they "have significantly increased our knowledge of the pathogenesis of endopthalmitis," and "revealed a wealth of new therapeutic targets for its treatment." also indicates that the Petitioner's research validated his own research results, and together they "overturned the long held assumption that photoreceptors were not involved" in causing inflammation. These letters are supported by copies of the referenced articles which cite to, and comment upon, the Petitioner's work, as well as a copy of the patent application.

[2] Results from Google Scholar submitted by the Petitioner indicate that his paper published in *JCI Insight*, had been cited by other researchers on 3 occasions as of August 17, 2017. Results retrieved from Google Scholar on September 21, 2018 shows that the article has now been cited on 32 occasions.

Upon review of the evidence described above, we find that the Petitioner has made original contributions of major significance to the field of microbiology, and thus that he meets this criterion.

> *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 record establishes that the Petitioner has authored several articles that were published in peer-reviewed scientific journals, as well as a book chapter. Accordingly, we find that he meets this criterion.

B. Final Merits Determination

Since the Petitioner has provided documentation that meets at least three of the ten evidentiary criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x), we will now evaluate whether he has demonstrated, by a preponderance of the evidence, that he has sustained national or international acclaim and is one of the small percentage at the very top of the field of microbiology, and that his achievements have been recognized in the field through extensive documentation.

On appeal, the Petitioner first focuses on his publication record, asserting that the impact factors and other metrics regarding the scientific journals in which he has published "confirms [the Petitioner's] status as a leader in his field." The Petitioner provides the impact factors for some journals without providing a basis for comparison, while providing rankings for some others in certain disciplines based upon a different metric. This incomplete evidence is insufficient to support his claim that having an article published in these journals places him at the top of his field. In general, just as we do not assume that an article published in a journal with a high impact factor or other metric will necessarily have a significant impact upon a particular field, we also do not assume that the publication of such an article necessarily places its authors at the top of their field. When considering an individual researcher's record of publication, the prestige of the journals in which he or she has published is only one factor among several, which include the number and frequency of published articles and their influence on the field as a whole.

Regarding the impact his research has had on the field of microbiology, the Petitioner refers to a report submitted in his RFE response, which contains figures showing the number of citations to papers in specific fields over time.[3] However, these figures indicate that significant differences in citation rates occur only after several years, and at the very top percentiles. Therefore, the fact that a paper published in 2017 is ranked in the top 0.10 percent in number of citations indicates that it has received somewhat more notice in the field than the average paper. These figures alone, however, do not place the Petitioner at the top of his field. In addition, while the Petitioner's recent work with

[3] For instance, the report filed with the initial evidence shows that at that point in 2017, articles in the field of microbiology in the top 0.01 percent were cited at least 4 times, while those in the 1 percent were cited 2 times. Going back to 2014, articles in the top 10 percent were cited at least 17 times, while those in the top 20 percent were cited at least 11 times.

the Zika virus has received greater than average notice in his field, it cannot be said to have brought him the kind of sustained national or international acclaim required for this visa classification. The evidence shows that the Petitioner's published work in other areas of his field dates back to 2010, but it does not establish that that work garnered the same level of acclaim as his more recent work.

In addition, the Petitioner refers to the media coverage that his work has received. Specifically, he submitted evidence of a local television station in the West Michigan area which posted a video and accompanying short article on its website regarding his research on the Zika virus' effect on eyes. While it is noted that verifies in his second letter that the Petitioner played a significant role in the research which was a subject of this report, it nevertheless does not mention him, and therefore does not support a claim to his national or international recognition in the field. The second item relating to media coverage is an article posted to www.newswise.com, concerning the same research covered by the local television station. Although the Petitioner has not submitted evidence regarding this website, this article appears to be a news release written by which provided a grant to fund this research. While the Petitioner is named among a list of contributors in this article, he has not established how it might have garnered acclaim for him beyond or his employer,

Regarding his role as a judge of the work of others in the field of microbiology, the Petitioner highlights his membership on the editorial board of the as well as role as lead editor for a special issue of that journal. However, the email which serves as primary evidence of this role indicates only that he is "requested to submit one article and one editorial for this journal in your area of expertise." It is therefore not apparent if there are other duties that are expected of the Petitioner as a member of the editorial board, including judging the work of others. Nor has the Petitioner submitted evidence of his involvement in the peer review process for this journal. In addition, based upon a review of the website for this journal,[4] the record includes incomplete evidence of the membership of the editorial board, which the website indicates includes one editor-in-chief and more than one hundred members, including the Petitioner. Further, although the Petitioner submitted journal metrics for other journals for which he has performed peer review, he has not submitted evidence regarding the standing or prestige of Finally, the evidence submitted to verify his role as lead editor for a special issue of this journal indicates a "tentative date" of December 2016, and does not list any articles that may have been approved for publishing or any other information regarding the publishing of this special issue. This evidence, taken together with that which establishes his service as a peer reviewer for other scientific journals, is not sufficient to demonstrate that this activity distinguishes the Petitioner as a researcher at the top of his field.

After review of the entire record, we find that the Petitioner has not established that, per the final merits analysis outlined in *Kazarian*, 596 F.3d at 1119-20, he has sustained national or international acclaim and is one if the small percentage of researchers at the very top of the field of microbiology.

[4] https accessed on September 24, 2018.

III. CONCLUSION

The evidence establishes that the Petitioner meets the requisite three of ten evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). However, upon review of the entirety of the record, we do not find that the Petitioner has established the acclaim and recognition required for this classification.

ORDER: The appeal is dismissed.

Cite as *Matter of P-K-S-*, ID# 1645636 (AAO Oct. 31, 2018)