U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF A-M-I-

DATE: SEPT. 28, 2017

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, an associate research scholar, 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 satisfied only two of the initial evidentiary criteria, of which she must meet at least three. On appeal, the Petitioner submits additional evidence and argues that she has demonstrated eligibility for this classification.

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

I. LAW

Section 203(b)(1)(A) of the Act states:

> Aliens with extraordinary ability. -- An alien is described in this subparagraph 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). Alternately, he or she must provide evidence that meets at least three of the criteria 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) (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 an associate research scholar in the field of theoretical cosmology, focusing on the earliest moments of the universe. As she has not established that she has received a major, internationally recognized award, she 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 judging criterion at 8 C.F.R. § 204.5(h)(3)(iv) and the authorship of scholarly articles criterion at 8 C.F.R. § 204.5(h)(3)(vi). On appeal, she maintains that she also meets the contributions of major significance criterion at 8 C.F.R. § 204.5(h)(3)(v) and the published material criterion at 8 C.F.R. § 204.5(h)(3)(iii).[1] Upon review, we agree that the Petitioner has met the plain language requirements of three criteria. Furthermore, in a final merits analysis, we find that she has demonstrated achievements indicating she is one of that small percentage at the very top of the field of endeavor.

[1] The Director found that the published material was not about the Petitioner; rather, it was about her work. As we find that she meets the plain language requirements of three other criteria, (scholarly articles, serving as the judge of the work of others, and original contributions) any items that might relate to other criteria are better considered under the final merits analysis.

A. Evidentiary Criteria

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

The Petitioner offered evidence that she has reviewed manuscripts submitted for publication in [redacted] and [redacted] among other journals. We therefore agree with the Director that the evidence provided meets the requirements of the regulation.

> *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 Director found the Petitioner did not meet this criterion. Upon a review of the record, however, we agree with the Petitioner that she has shown original scientific contributions of major significance in the field.

At the time of filing, the Petitioner was a [redacted] fellow at [redacted] focusing her research on understanding the first moments of the universe. The record reflects that she was the first researcher to discover critical flaws in the existing standard paradigm of inflationary cosmology and, using data gleaned from the [redacted] she proposed a new theory of the origins of the universe that solved the problems with the theory. In her appellate submission, she explains that inflation is the theorized era following the "big bang" when the universe expanded rapidly, and it has been the most widely accepted theory of the universe's earliest moments since the early 1980s. Following publication of the [redacted] data in 2013, she discovered several major flaws with the inflationary model and proposed new theories that are consistent with the data, including the ekpyrotic universe model and the anamorphic model.

Her work resulted in publications in top journals in her field including [redacted] and [redacted] and prompted the creator of the inflationary theory of the universe, [redacted] to write a paper addressing her work.[5] Furthermore, [redacted] one of the main authors of the accepted inflationary theory, dedicated an entire talk at the [redacted] conference on primordial cosmology to address the Petitioner's theory, and the [redacted] scientific team has included her interpretation of the data related to inflation in their 2015 publication. Multiple major media

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[2] [redacted] (2015).

[3] [redacted] (2013); [redacted] (2014).

[4] [redacted] (2014).

[5] [redacted] (2014).

publications, such as [redacted] and [redacted] also reported on the study. We therefore agree that the Petitioner's research had major significance.

> *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 Petitioner provided evidence that she authored published scholarly articles in her field, such as "Inflationary paradigm in trouble after [redacted] 2013," which appeared in [redacted] We therefore agree with the Director that the evidence provided meets the plain language requirements of this criterion.

B. Final Merits Determination

In a final merits determination, we examine the material in a collective nature to determine if the individual has demonstrated, by a preponderance of the evidence, that a petitioner has sustained national or international acclaim, and achievements recognized in the field through extensive documentation. The Petitioner has offered proof showing her pioneering research and the impact that it has had on the cosmology community, letters from experts in her field, data on the prestige related to journals that published her work, and evidence of the media attention that her discovery generated.

We evaluate the significance of the Petitioner's judging experience to determine if such evidence is indicative of his extraordinary ability as required for this highly restrictive classification. *See Kazarian*, 596 F. 3d at 1121-22. Here, the record indicates that she has received and completed independent requests to review a substantial number of manuscripts for multiple professional publications including [redacted] the highest ranked journal in the field of physics and astronomy, and [redacted] the second highest ranked journal in the field of physics. We find this experience, together with the achievements described below, to be consistent with a determination that the Petitioner is among the small percentage at the top of his field of endeavor. *See* 8 C.F.R. § 204.5(h)(2).

The Petitioner has provided evidence of her authorship of a considerable amount of published material relating to her anamorphic universe theory that appeared in professional journals, including multiple articles in [redacted] and [redacted] In addition, the record includes evidence that the Petitioner has written about her theory for [redacted] and her work has been discussed in numerous popular science publications including [redacted] and [redacted]

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 evidence that her articles have garnered an unusually high number of citations, and that her work has sparked a fierce debate among theoretical cosmologists. Even after

the filing of this appeal, her work continues to be cited and debated at a level commensurate with sustained national or international acclaim at the top of her field. For example, she recently authored an article in [redacted] entitled '[redacted]' in which she explains her research which casts doubt on the long-held inflationary theory of the early cosmos. [redacted] along with 33 other cosmologists including [redacted] and [redacted] the 2006 recipient of the [redacted] in Physics, published a rebuttal article in [redacted] in response to her theory. Her work was also featured on [redacted] in an article published in [redacted] 2016 entitled '[redacted]' As such, the Petitioner has established that her publication record sets her apart through a "career of acclaimed work in the field." *See* H. Rep. No. 101-723, at 59 (Sept. 19, 1990).

The influence of the Petitioner's research is further evidenced through recommendation letters applauding her work and its influence upon the field of theoretical cosmology. For example, [redacted] a professor of theoretical physics at the [redacted] writes that the Petitioner's research "has had a large impact on my research and the research of a large portion of the cosmology community." [redacted] of the [redacted] comments that her anamorphic theory is a "bold strike against one of the most widely accepted theories in theoretical physics," and that her theories have "significant impact," on the question of how the universe was created. Similarly, [redacted] chair of the department of astronomy at [redacted] notes that the Petitioner's "pioneering discoveries" have "shaken the cosmological community." He notes that her work is a "masterpiece" and that "she is the best theorist that I have ever worked with on the very early universe." Lastly, [redacted] professor of theoretical particle physics at the [redacted] attests that the Petitioner "belongs to a small group of physicists worldwide" who are "at the forefront of new discoveries about the universe." In addition, the record includes ample documentary evidence supporting the aforementioned references' statements regarding the significance and originality of the Petitioner's work.

III. CONCLUSION

When considered in its totality, the evidence submitted supports a finding that the Petitioner possesses extraordinary ability consistent with a finding that she is one of a small percentage at the very top of the field of endeavor and that she has documented sustained acclaim. *See* section 203(b)(1)(A) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *Kazarian*, 596 F.3d at 1119-20.

ORDER: The appeal is sustained.

Cite as *Matter of A-M-I-*, ID# 595242 (AAO Sept. 28, 2017)