U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF B-C-

DATE: SEPT. 8, 2015

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, an individual, seeks classification as an individual "of extraordinary ability" in the sciences. *See* Immigration and Nationality Act (the Act) § 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). The Director, Texas Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

The classification the Petitioner seeks makes visas available to foreign nationals 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 determined that the Petitioner had not satisfied the initial evidence requirements set forth at 8 C.F.R § 204.5(h)(3), which requires documentation of a one-time achievement or evidence that meets at least three of the ten regulatory criteria.

On appeal, the Petitioner submits a statement with additional and previously submitted materials. For the reasons discussed below, we agree that the Petitioner has not established his eligibility for the classification sought. Specifically, the Petitioner has not submitted qualifying evidence of a one-time achievement pursuant to 8 C.F.R. § 204.5(h)(3), or documentation that satisfies at least three of the ten regulatory criteria set forth in the regulations at 8 C.F.R. § 204.5(h)(3)(i)-(x). As such, the Petitioner has not demonstrated that he is one of the small percentage who are at the very top in the field of endeavor, and that he has sustained national or international acclaim. *See* 8 C.F.R. § 204.5(h)(2), (3). Accordingly, we will dismiss the Petitioner's appeal.

I. LAW

Section 203(b) of the Act states, in pertinent part, that:

> (1) Priority workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):
>
> (A) 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,
>
> (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 regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate the foreign national's sustained acclaim and the recognition of the individual's achievements in the field through evidence of a one-time achievement (that is, a major, internationally recognized award). If a petitioner does not submit this documentation, then that petitioner must submit sufficient qualifying evidence that meets at least three of the ten categories of evidence listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

The submission of evidence relating to 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 evidence is first counted and then, if satisfying the required number of criteria, considered in the context of a final merits determination). *See also Rijal v. USCIS,* 772 F.Supp.2d 1339 (W.D. Wash. 2011) (affirming our proper application of *Kazarian*), *aff'd,* 683 F.3d. 1030 (9th Cir. 2012); *Visinscaia v. Beers*, 4 F.Supp.3d 126, 131-32 (D.D.C. 2013) (finding that we appropriately applied the two-step review); *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").

II. ANALYSIS

A. Evidentiary Criteria[1]

> *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.*

The Director determined the Petitioner met the requirements of this criterion. The Petitioner has submitted sufficient evidence, including his appointment as the Review Editor of [redacted], as well as his peer review duties for two scholarly journals to establish that he meets this criterion.

[1] We have reviewed all of the evidence the petitioner has submitted and will address those criteria the petitioner claims to meet or for which the petitioner has submitted relevant and probative evidence.

Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.

The plain language of this regulatory criterion requires that the contributions not only be original, but rise to the level of major significance in the field as a whole. The phrase "major significance" is not superfluous and, thus, it has some meaning. *Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F. 3d 28, 31 (3rd Cir. 1995) *quoted in APWU v. Potter*, 343 F.3d 619, 626 (2nd Cir. Sep 15, 2003). Contributions of major significance connotes that the Petitioner's work has significantly impacted the field. *See* 8 C.F.R. § 204.5(h)(3)(v); *see also Visinscaia*, 4 F. Supp. 3d at 135-136.

The Director determined that the Petitioner did not meet the requirements of this criterion. On appeal the Petitioner states that the Director did not consider the documents the Petitioner submitted in response to the request for evidence (RFE). That evidence is comprised of his citations, including one book and five review articles; his patents; his studies resulting in published articles; and the reference letters.

First, the Petitioner's RFE response included a map indicating that citations to his work originated from numerous countries, as well as five review articles and one book chapter as evidence pertaining to citations. While the Petitioner submitted an abstract from the book chapter, the record does not contain evidence that this chapter cites to the Petitioner's work.

The Petitioner indicates that the citing review articles affirm the importance of his biomarker research relating to several types of cancer diagnoses. He provides two quotes from the review article titled, " " The authors of this review article are associated with the The first quote relies on two articles, one of which the Petitioner authored, for the proposition that is associated with the promotion of The second quote is the review article's closing paragraph and relates to all 25 of the citations within the review article. The Petitioner discusses the review article as follows: "As we knew, is the primary agency of the United States government responsible for biomedical and health-related research and is the largest biomedical research institution in the world. Taken together, these subjective evidences [sic] supported [that] I [have] made a contribution of major significance to the field of cancer research." The review article itself, however, does not reflect that the authors found the Petitioner's work of such value that they discuss his work extensively. The remaining four review articles do not single out the Petitioner's work from the other recent research cited.

That researchers from multiple countries cite to the Petitioner's work demonstrates that international sources have noticed and referenced his work. Another factor in considering the impact of the Petitioner's research is the number and nature of the citations themselves. Initially, the Petitioner submitted evidence from Google Scholar reflecting the number of citations his published articles have garnered. Although his 2008 articles in , relating to received 50 citations as of the date of filing, the record lacks evidence that this number is indicative of a significant influence within the field. The record includes the citation numbers for other articles in the field that have garnered far more citations during the same period. For example, a 2008 article entitled " ," appearing in had received 253 citations as of the date of filing.

A patent affords the patentee "the right to exclude others from making, using, offering for sale, or selling the invention throughout the United States or importing the invention into the United States, and, if the invention is a process, of the right to exclude others from using, offering for sale or selling throughout the United States, or importing into the United States, products made by that process." *See* 35 U.S.C. § 154. While a patent affirms the originality of the innovation, it does not establish the level of the impact in the field. The Petitioner initially included a March 12, 2012, letter from [redacted] of the [redacted], indicating that the Petitioner's provisional patent application had been filed with the U.S. Patent and Trademark Office. In response to the RFE, the Petitioner provided additional information relating to the patent, [redacted] transgenic lymphoma mouse model, from the website of [redacted] which includes the advantages of the invention, but does not explain how it is already impacting the field. For example, the materials do not suggest that [redacted] is marketing the model or that another entity has licensed the right to do so. The Petitioner also submitted evidence that the [redacted] funded the Petitioner's research on [redacted]. While a grant of funding demonstrates that the foundation finds the proposed research promising, it does not establish the ultimate impact of the completed research.

The Petitioner also discusses a second study that the [redacted] funded, which resulted in another published article. Although the Petitioner submitted evidence demonstrating that the journals require original research results, he does not offer evidence demonstrating that the findings from this second study constitute contributions of major significance in the field beyond the incremental progress offered through original scientific research. General contributions of original research that are inherent to one's occupation do not demonstrate that the Petitioner's contributions are of major significance in the field.

Additionally, the Petitioner asserts that his presentations at an international conference and published in the conference proceedings contribute to his eligibility under this criterion. This evidence shows that the Petitioner has disseminated his work. The Petitioner has not, however, demonstrated the impact of his findings after dissemination to the field at the conference.

On appeal, the Petitioner indicates that the Director did not consider the reference letters. The Petitioner initially submitted letters from Dr. [redacted] and Dr. [redacted] faculty at Sun [redacted] where the Petitioner obtained his Ph.D. Both letters praised the Petitioner's skills acquired at the University, but did not explain how his work there has already impacted the field. Dr. [redacted], Chief of the [redacted] and [redacted], explained the details of the Petitioner's research with [redacted] and its applicability to angiogenesis in tumors, concluding that the Petitioner's research "will lead to novel approaches against cardiovascular diseases and tumor and have positive impact on these diseases." Dr. [redacted] did not, however, identify how the Petitioner's work on [redacted] has already impacted the field.

Dr. [redacted] the Director for the [redacted] at [redacted], explained the Petitioner's findings while working in Dr. [redacted] laboratory. He stated that the Petitioner identified novel signaling pathways that are associated with immune system development and tumorigenesis that, once completed, "could be a major contribution to the field." That the Petitioner will provide a prospective benefit to the United States as a permanent resident is a requirement of the

statute. *See* section 203(b)(1)(A)(iii) of the Act. This criterion, however, requires that the Petitioner have already made contributions of major significance in the field, however, Dr. did not identify how the Petitioner has already accomplished that level of achievement. Similarly, Dr. Director of at the in Georgia, discussed the importance of new therapies for lymphoma and concluded that the Petitioner's "continuing research in elucidating the mechanism of and lymphogenesis will definitely benefit the national interest of the United States."

Dr. , Director of asserted that the Petitioner is an extraordinary researcher who has demonstrated critical and original contributions to the study of hematology and oncology. Dr. indicated the Petitioner is the first to demonstrate that a gene chromosome, can promote lymphomagenesis based on genomic background and that funded the Petitioner's research in this area. Although Dr. confirmed the Petitioner was the first to demonstrate such a finding, he did not identify the manner in which this original finding was of major significance in the field. Dr. affirmed that the studies "simulated by these observation[s] may well accelerate research leading to treatment for these diseases." Finally, Dr. discussed the Petitioner's reputation, but offered no examples of how the Petitioner has contributed to the field in a major and significant manner. The reference letters submitted by the Petitioner do not provide specific examples of how the Petitioner's work has significantly impacted the field at large or otherwise constitutes original contributions of major significance.

The Board of Immigration Appeals (BIA) has stated that testimony should not be disregarded simply because it is "self-serving." *See, e.g.*, *Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing *Matter of M-D-*, 21 I&N Dec. 1180 (BIA 1998); *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998); *Matter of Dass*, 20 I&N Dec. 120 (BIA 1989); see also *Matter of Acosta*, 19 I&N Dec. 211, 218 (BIA 1985)). The Board clarified, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Matter of S-A-*, 22 I&N Dec. at 1332. If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for a petitioner to submit corroborative evidence. *Y-B-*, 21 I&N Dec. at 1136.

Solicited letters from local colleagues that do not specifically identify contributions or provide specific examples of how those contributions influenced the field are insufficient. *Kazarian v. USCIS,* 580 F.3d 1030, 1036 (9th Cir. 2009) *aff'd in part* 596 F.3d 1115 (9th Cir. 2010). In 2010, the *Kazarian* court affirmed that "letters from physics professors attesting to [that Petitioner's] contributions in the field" were insufficient. 596 F.3d at 1122. The opinions of experts in the field are not without weight and have been considered above. While such letters can provide important details about the Petitioner's skills, they cannot form the cornerstone of a successful extraordinary ability claim. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988).

However, USCIS is ultimately responsible for making the final determination regarding the Petitioner's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the Petitioner's eligibility. *See id.* at 795; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact" but rather

is admissible only if it will assist the trier of fact to understand the evidence or to determine a fact in issue). USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Caron International*, 19 I&N Dec. at 795; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Assoc. Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). *See also Visinscaia*, 4 F.Supp.3d at 134-35 (concluding that USCIS' decision to give limited weight to uncorroborated assertions from practitioners in the field was not arbitrary and capricious). While letters authored in support of the petition have probative value, they are most persuasive when supported by evidence that already existed independently in the public sphere. As the supporting evidence, including citations and patent applications, are not indicative of the Petitioner's influence, the Petitioner has not submitted evidence that meets the plain language requirements of this criterion.

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.

The Director determined the Petitioner met the requirements of this criterion. The evidence includes the Petitioner's scholarly articles published in internationally circulated scholarly journals in his academic field; for example, This authorship establishes that the Petitioner meets this criterion.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.

A leading role should be apparent by its position in the overall organizational hierarchy and its matching duties. A critical role is evident from the Petitioner's impact on the organization or the establishment's activities. The Petitioner's performance is a factor in whether the role was critical for the organization or establishment as a whole.

The Director determined that the Petitioner did not meet the requirements of this criterion. Regarding the Petitioner's role at the Director's decision advised the Petitioner that his title at was not sufficient to demonstrate his eligibility under this criterion without additional evidence of his duties and the actual role he performed for this organization. On appeal, the Petitioner asserts that he performs in a leading or critical role for through his appointment as an assistant professor, his work with the clinical and translational research programs, and as a group leader at the He also relies on his work with the at .

The letters the Petitioner references from relate to his employment as a postdoctoral fellow or as an assistant professor. The evidence does not specify how these positions fit within the hierarchy of the university or how he contributed to the organization in a way that is significant to the organization's outcome. *See Visinscaia*, 4 F. Supp. 3d 126, at 135. Specifically, Dr. letter did not provide an explanation of how the Petitioner's performance for the laboratory or for the university was critical such that it had an impact on the success of either entity beyond the understandable need for competent and skilled researchers. Dr. only offers that he is very satisfied and greatly impressed with the Petitioner's work. Another faculty member, Dr. Assistant Professor at the

indicated in his letter that the economic impact of the Petitioner's work is important and that the Petitioner is playing a pivotal role in a key research program bringing advances in lymphoma research. Dr. did not suggest the manner in which the Petitioner's work has resulted in a measurable level of success for the laboratory or the university.

The Petitioner also asserts he "provided subjective evidences" of his contributions to the success of . Specifically, the Petitioner indicates he was the first and only person to receive grant support from the in the He also asserts that because of this funding, he was appointed as the leader of the department of cancer research team. First, regarding the distinguished reputation of , the Petitioner provided evidence deriving from *Wikipedia*. With regard to information from *Wikipedia*, there are no assurances about the reliability of the content from this open, user-edited Internet site.[2] *See Lamilem Badasa v. Michael Mukasey*, 540 F.3d 909 (8th Cir. 2008). Regardless, the Petitioner has not documented a leading or critical role for The Petitioner included an October 16, 2012 letter from Dr. who, prior to his work at also served as Director of Dr. letter confirmed the Petitioner's promotion to Vice Director of The job description consists of supervising the efforts of an eight-member staff and being responsible for directing the staff's efforts. The letter did not specify the number of teams or vice directors at The Petitioner also did not corroborate the importance of the grant for the university with supporting documentation. He has not provided evidence of the duties he actually performed once promoted to Vice Director of the , nor did he provide evidence that describes how his performance in this role was critical to the success of the university as a whole. While he may have played leading role for the eight-member team at the Petitioner has not demonstrated that this team enjoys a distinguished reputation independent of the university. The Petitioner has not submitted evidence that meets the plain language requirements of this criterion.

B. Summary

For the reasons discussed above, we agree with the Director that the Petitioner has not submitted the requisite initial evidence, in this case, evidence that satisfies three of the ten regulatory criteria.

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[2] Online content from *Wikipedia* is subject to the following general disclaimer:

> WIKIPEDIA MAKES NO GUARANTEE OF VALIDITY. *Wikipedia* is an online open-content collaborative encyclopedia, that is, a voluntary association of individuals and groups working to develop a common resource of human knowledge. The structure of the project allows anyone with an Internet connection to alter its content. Please be advised that nothing found here has necessarily been reviewed by people with the expertise required to provide you with complete, accurate or reliable information. . . . *Wikipedia* cannot guarantee the validity of the information found here. The content of any given article may recently have been changed, vandalized or altered by someone whose opinion does not correspond with the state of knowledge in the relevant fields.

See http://en.wikipedia.org/wiki/Wikipedia:General_disclaimer, accessed on August 28, 2015, a copy of which is incorporated into the record of proceeding.

III. CONCLUSION

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the Petitioner has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of his or her field of endeavor.

Had the Petitioner submitted the requisite evidence under at least three evidentiary categories, in accordance with the *Kazarian* opinion, the next step would be a final merits determination that considers all of the evidence in the context of whether or not the Petitioner has demonstrated: (1) a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor," and (2) "that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." 8 C.F.R. § 204.5(h)(2) and (3); *see also Kazarian*, 596 F.3d at 1119-20. As the Petitioner has not done so, the proper conclusion is that the Petitioner has failed to satisfy the antecedent regulatory requirement of presenting evidence that satisfied the initial evidence requirements set forth at 8 C.F.R § 204.5(h)(3) and (4). *Kazarian*, 596 F.3d at 1122. Nevertheless, although we need not provide the type of final merits determination referenced in *Kazarian*, a review of the evidence in the aggregate supports a finding that the Petitioner has not demonstrated the level of expertise required for the classification sought.[3]

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, it is a petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the Petitioner has not met that burden.

ORDER: The appeal is dismissed.

Cite as *Matter of B-C-*, ID# 12974 (AAO Sept. 8, 2015)

[3] We maintain *de novo* review of all questions of fact and law. *See Soltane v. United States Dep't of Justice*, 381 F.3d 143, 145 (3d Cir. 2004). In any future proceeding, we maintain the jurisdiction to conduct a final merits determination as the office that made the last decision in this matter. 8 C.F.R. § 103.5(a)(1)(ii); *see also* INA §§ 103(a)(1), 204(b); DHS Delegation Number 0150.1 (effective March 1, 2003); 8 C.F.R. § 2.1 (2003); 8 C.F.R. § 103.1(f)(3)(iii) (2003); *Matter of Aurelio*, 19 I&N Dec. 458, 460 (BIA 1987) (holding that legacy INS, now USCIS, is the sole authority with the jurisdiction to decide visa petitions).