U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF A-P-O-

DATE: JAN. 5, 2017

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a medical director and spinal surgeon, 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 Texas 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.

The matter is now before us on appeal. In his appeal, the Petitioner submits a brief, stating that he meets at least three criteria.

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

I. LAW

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

> (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 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 currently the medical director at the and at the As the Petitioner has not 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 found that that the Petitioner met the judging criterion under 8 C.F.R. § 204.5(h)(3)(iv) and the scholarly articles criterion under 8 C.F.R. § 204.5(h)(3)(vi). On appeal, the Petitioner maintains that he also meets the membership criterion under 8 C.F.R. § 204.5(h)(3)(ii), the original contributions criterion under 8 C.F.R. § 204.5(h)(3)(v), and the high salary criterion under 8

C.F.R. § 204.5(h)(3)(ix).[1] We have reviewed all of the evidence in the record of proceedings, and it does not support a finding that the Petitioner meets the plain language requirements of at least three criteria.

A. Evidentiary 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 expresses on appeal that his memberships with the and the render him eligible for this criterion. Regarding the Petitioner submitted a letter from medical director at who indicated that is "a very prestigious society, recognized worldwide." In addition, orthopedic surgeon at stated that "[o]nly extremely qualified and recognized Spine Surgeons, with strong academic and professional background [*sic*] can become members of and "the applicant requires peer sponsorship by at least two existing members." The record also contains bylaws reflecting various membership categories, including active membership that requires a medical degree, doctor of philosophy degree, or substantial contributions to and the field, and good ethical standing.

Although indicates that is prestigious and internationally recognized, the reputation of an association is not a determining factor for eligibility for this criterion; rather a petitioner must show that the association requires outstanding achievements as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, minimum education or experience, recommendations by colleagues or current members, or payment of dues do not satisfy this criterion as such requirements do not constitute outstanding achievements. Finally, a petitioner's membership needs to be judged by recognized national or international experts.

A review of bylaws do not support claim that an applicant must be sponsored by two existing members. Regardless, the Petitioner has not established that requires outstanding achievements as a condition for membership. Furthermore, the bylaws indicate that membership is reviewed by the membership committee and, if approved, forwarded to the board of directors. The Petitioner has not shown that the membership committee and board of directors are comprised of recognized national or international experts, as required by this regulatory criterion.

[1] Although he previously claimed eligibility for the awards criterion under 8 C.F.R. § 204.5(h)(3)(i), the published material criterion under 8 C.F.R. § 204.5(h)(3)(iii), and the leading or critical role criterion under 8 C.F.R. § 204.5(h)(3)(viii), the Petitioner does not contest the decision of the Director, offer further arguments, or submit additional evidence for these criteria on appeal, nor does the record support a finding that he meets them. Accordingly, we will not address these criteria in this decision.

For these reasons, the Petitioner has not established that his membership with meets this criterion.

Regarding the Petitioner states on appeal that membership requirements "include holding a specialist degree and postgraduate degree, academic publications, and peer review." The record contains a registration application listing required documentation, such as medical degrees, authorship of journal articles, and reference letters. As discussed above, these requirements do not rise to the level of outstanding achievements. Moreover, the application indicates that the application and supporting documentation will be reviewed by the credential committee, who will then inform the national board. Although the Petitioner provided screenshots regarding the background and history of they do not show that recognized national or international experts make up the credential committee and national board. Therefore, the Petitioner has not shown that his membership with meets this criterion.

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 Director determined that the Petitioner met this criterion based on his thesis advisor role for and his faculty advisor role for The record contains a letter from and who indicated that the Petitioner served as an advisor to thesis. In addition, the Petitioner presented a letter from who stated that he interned under the Petitioner at and

The regulation at 8 C.F.R. § 204.5(h)(3)(iv) requires evidence that the petitioner has served as "a judge" of the work of others. The phrase "a judge" implies a formal designation in a judging capacity, either on a panel or individually as specified at 8 C.F.R. § 204.5(h)(3)(iv). The documentation mentioned above indicates that the Petitioner served as a thesis and faculty advisor. The Petitioner, however, did not demonstrate that he served as a judge consistent with the plain language of this regulatory criterion. Not every instance of reviewing the work of others as part of one's job duties falls under this criterion. Therefore, we withdraw the Director's finding regarding this criterion.

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).

On appeal, the Petitioner contends that he "presented detailed, credible and voluminous evidence of his contributions." A review of the record of proceedings reflects that the Petitioner initially claimed eligibility based on his speakership role at 24 conferences, symposia, and societal conferences, such as the and The Petitioner, however, has not established that his conference presentations influenced

his field in a significant manner. Participation in conferences may demonstrate that his findings were shared with others and may be acknowledged as original contributions based on their selection for presentation. The record, however, does not demonstrate that the Petitioner's presentations, for example, are frequently cited by other researchers or have otherwise impacted the field. Although the Petitioner received a first place award for his paper presented at the the record does not include evidence reflecting that his paper received recognition beyond the conference proceeding. Publications and presentations are not sufficient under 8 C.F.R. § 204.5(h)(3)(v) absent evidence that they were of "*major* significance." *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009) *aff'd in part* 596 F.3d 1115. In 2010, the *Kazarian* court reaffirmed its holding that we did not abuse our discretion in our adverse finding relating to this criterion. 596 F.3d at 1122.

In response to the director's RFE, the Petitioner offered recommendation letters from orthopedic surgeon at and principal engineer at stated that the Petitioner published a paper entitled which "became an instant must have for orthopedic surgeons treating cancer patients in Venezuela." however, does not elaborate or give examples on how the manual has impacted or influenced the field. In addition, the Petitioner did not provide supporting documentary evidence showing that the manual is considered an original contribution of major significance by the field.

In addition, praised the Petitioner for his collaboration on a clinical study but did not show that his contributions to the clinical study impacted the field beyond having the findings presented at a conference and published in a journal. Neither nor the Petitioner provided examples of researchers relying significantly on his findings or extensively citing to his work, as opposed to merely referencing his work as background. The lack of specific information contained in the letter does not show the Petitioner's research and findings are viewed as an original contribution of major significance in the field.

Ultimately, letters that repeat the regulatory language but do not explain how a petitioner's contributions have already influenced the field are insufficient to establish original contributions of major significance in the field. *Kazarian*, 580 F.3d at 1036, *aff'd in part* 596 F.3d at 1115. In 2010, the *Kazarian* court reiterated that the USCIS' conclusion that the "letters from physics professors attesting to [the petitioner's] contributions in the field" were insufficient was "consistent with the relevant regulatory language." 596 F.3d at 1122. The letters considered above primarily contain attestations of the Petitioner's status in the field without providing specific examples of how those contributions rise to a level consistent with major significance in the field. Repeating the language of the statute or regulations does not satisfy a 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*, No. 95 CIV. 10729, *1, *5 (S.D.N.Y. Apr. 18, 1997). 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). Without supporting evidence, the Petitioner has not met his burden of showing that he has made original contributions of major significance in the field.

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 documented his authorship of scholarly articles in professional publications, such as the [redacted] and [redacted] Thus, the Director concluded that the Petitioner satisfied this criterion, and the record supports that finding.

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field. 8 C.F.R. § 204.5(h)(3)(ix).

The Petitioner states on appeal that he presented evidence that his salary is almost five times higher than the average salary paid to other doctors in Venezuela. The record indicates that the Petitioner presented partial translations of his income tax returns from 2012-2014 and a screenshot from [redacted] showing the base salaries of physicians in Venezuela depending on education, experience, and location. The uncertified translations do not comply with the regulation at 8 C.F.R. § 103.2(b)(3).[2] As the Petitioner did not submit full, English language translations, we cannot determine whether the evidence supports his claims.

Notwithstanding, the partial translations reflect that the Petitioner earned Venezuelan Bolivare (VEF) 1,134,095 in 2014. According to the article, the highest base salary for physicians in 2015 was VEF 25,150/per month or VEF 301,800 per year. The record contains a letter from [redacted] general coordinator of academic council for [redacted] who stated that the Petitioner is the "Medical Director" for [redacted] In addition, according to his curriculum vitae, the Petitioner also serves as the "Medical Director" for [redacted]

It appears that the income reported on his tax documentation was based on his position as a medical director for two institutions. Rather than presenting evidence comparing his salary to other medical directors, the Petitioner provided evidence of base salaries of physicians. The Petitioner has not shown that he commands a high salary in relation to other medical directors. *See Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994) (considering a professional golfer's earnings versus other PGA Tour golfers); *see also Grimson v. INS*, 934 F. Supp. 965, 968 (N.D. Ill. 1996) (considering NHL enforcer's salary versus other NHL enforcers); *Muni v. INS*, 891 F. Supp. 440, 444-45 (N. D. Ill. 1995) (comparing salary of NHL defensive player to salary of other NHL defensemen). Moreover, the Petitioner did not submit evidence showing how much salary he earned in each position he served. In the present case, the evidence the Petitioner submits does not establish that he

[2] 8 C.F.R. § 103.2(b)(3) requires that any foreign language document must be submitted with a full English language translation that the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

has received a high salary or other significantly high remuneration for services in relation to others in the field. Accordingly, the Petitioner has not demonstrated that he meets this criterion.

B. Summary

As explained above, the record only satisfies one of the regulatory criteria. As a result, 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 listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

Had the Petitioner satisfied at least three evidentiary categories, the next step would be a final merits determination that considers all of the filings 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 individual "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), (3); *see also Kazarian*, 596 F.3d at 1119-20. Although we need not provide the type of final merits determination referenced in *Kazarian*, a review of the record in the aggregate supports a finding that the Petitioner has not established the level of expertise required for the classification sought.

III. CONCLUSION

For the above stated reasons, the Petitioner has not met his 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).

ORDER: The appeal is dismissed.

Cite as *Matter of A-P-O-*, ID# 124460 (AAO Jan. 5, 2017)