U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF Q-Z-

DATE: NOV. 28, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a postdoctoral fellow in neuroscience, 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 although the Petitioner satisfied three of the initial evidentiary criteria, as required, he did not show sustained national or international acclaim and demonstrate that he is among the small percentage at the very top of the field of endeavor.

On appeal, the Petitioner submits additional documentation and a brief, arguing that he has sustained the required acclaim and has risen to the very top of his 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 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). If that petitioner does not submit this evidence, then he or she must provide 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).

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 fellow at [redacted] in [redacted] California. 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).

A. Evidentiary Criteria

The Director found that the Petitioner met the following three criteria: judging under 8 C.F.R. § 204.5(h)(3)(iv), original contributions under 8 C.F.R. § 204.5(h)(3)(v), and scholarly articles under 8 C.F.R. § 204.5(h)(3)(vi). Accordingly, we will evaluate the totality of the evidence in the context of the final merits determination below.

B. Final Merits Determination

As the Director determined that the Petitioner submitted the requisite initial evidence, we will evaluate whether he has demonstrated, by a preponderance of the evidence, his sustained national or international acclaim and that he is one of the small percentage at the very top of the field of endeavor, and that his achievements have been recognized in the field through extensive documentation. In a final merits determination, we analyze a petitioner's accomplishments and weigh the totality of the evidence to determine if his successes are sufficient to demonstrate that he

has extraordinary ability in the field of endeavor. *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 not shown his eligibility.

The Petitioner refers to four of our non-precedent decisions in which we sustained appeals concerning individuals of extraordinary ability in science-related fields, such as computer science, nanomaterials science and nanotechnology, neurological diseases, and flow control. These decisions were not published as a precedent and therefore do not bind USCIS officers in future adjudications. *See* 8 C.F.R. § 103.3(c). Non-precedent decisions apply existing law and policy to the specific facts of the individual case, and may be distinguished based on the evidence in the record of proceedings, the issues considered, and applicable law and policy. Here, the Petitioner did not demonstrate that the issues, areas of expertise, and evidence of acclaim were strikingly similar to his case.

The record reflects that the Petitioner received his doctor of natural science in biochemistry and molecular biology from the in China in 2012. According to his Form G-325A, Biographic Information, he has worked as a postdoctoral fellow at the (2013 – 2017) and (2017 – present).[1] As mentioned above, the Petitioner judged others within his field, authored scholarly articles, and made contributions through his research. The record, however, does not demonstrate that his 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).

Regarding his service as a judge of others, an evaluation of the significance of his experience is appropriate to determine if such evidence is indicative of the extraordinary ability required for this highly restrictive classification. *See Kazarian,* 596 F. 3d at 1121-22. The Petitioner maintains that he "has reviewed 45 times for 16 journals and 1 conference with worldwide circulation, a record reflecting his international recognition and reputation in the scientific research community." Although the Petitioner provided emails requesting him to review manuscripts, he did not demonstrate that he actually conducted 45 manuscript reviews. Moreover, the Petitioner did not establish that his review requests, as well as his actual reviews, places him among the small percentage at the very top of his field. *See* 8 C.F.R. § 204.5(h)(2). He did not show, for example, how the number of reviews he conducted or the number of journals he served compares to others at the top of the field.

In addition, the record reflects that his review requests occurred between 2014 and 2017. The Petitioner did not establish that this four-year period contributes to a finding that he has a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. at 59. While journals invited him to perform 16 reviews in 2014, 12 in 2015, 9 in 2016, and 8 in 2017, the Petitioner did not show that such judging experience is indicative of the required sustained national or international

[1] The record contains a letter from , professor at , who indicated that he employed the Petitioner in his laboratory at the starting in 2013 and currently employs him as a postdoctoral scholar at since 2017.

acclaim. *See* section 203(b)(1)(A) of the Act. The Petitioner did not demonstrate, for instance, that he garnered wide attention from the field based on his work as a journal referee. Moreover, although he submitted screenshots from the publishers of the journals relating to the aims and scopes of the publications, the Petitioner did not establish whether he performed manuscript reviews for highly ranked, prestigious journals in his field such that his experience places him among the small percentage at the very top of his field. *See* 8 C.F.R. § 204.5(h)(2).

Participation in the peer review process does not automatically demonstrate that an individual has sustained national or international acclaim at the very top of his field. Without evidence that sets him apart from others in his field, such as evidence that he has a consistent history of completing a substantial number of review requests relative to others, served in editorial positions for distinguished journals or publications, or chaired technical committees for reputable conferences, the Petitioner has not established that his peer review experience places him among that small percentage at the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2).

Likewise, publication of a petitioner's research does not automatically place one at the top of the field. Here, the Petitioner presented evidence showing that he authored 21 papers in professional journals from 2008 to 2017. The Petitioner, however, has not demonstrated that this publication record is consistent with having a "career of acclaimed work." H.R. Rep. No. at 59. In addition, the commentary for the proposed regulations implementing section 203(b)(1)(A)(i) of the Act provide that the "intent of Congress that a very high standard be set for aliens of extraordinary ability is reflected in this regulation by requiring the petitioner to present more extensive documentation than that required" for lesser classifications. 56 Fed. Reg. 30703, 30704 (July 5, 1991). He has not shown that his authorship of 21 published articles is reflective of being among the small percentage at the very top of his field. *See* 8 C.F.R. § 204.5(h)(2).

We acknowledge that the Petitioner has published four recent articles in the prestigious journal, *Nature*. Publication in a highly ranked journal in-and-of-itself, however, does not indicate a petitioner's sustained national or international acclaim. Moreover, that a publication bears a high ranking or impact factor is reflective of the publication's overall citation rate. It does not, however, show the influence of any particular author or demonstrate how an individual's research has had an impact within the field. Here, while publishing four recent articles in *Nature* is noteworthy, the Petitioner did not demonstrate that his overall publication record including these articles is tantamount to a career of acclaimed work or that it demonstrates the required sustained national or international acclaim for this highly restrictive classification. *See* H.R. Rep. No. at 59; section 203(b)(1)(A) of the Act.

As authoring scholarly articles is often inherent to the work of scientists and researchers, the citation history or other evidence of the influence of his articles can be an indicator to determine the impact and recognition that his work has had on the field and whether such influence has been sustained. For example, numerous independent citations for an article authored by the Petitioner may provide solid evidence that his work has been recognized and that other researchers have been influenced by his work. Such an analysis at the final merits determination stage is appropriate pursuant to

Kazarian, 596 F. 3d at 1122. On appeal, the Petitioner offers evidence that his articles have been cited 732 times, with his highest three articles cited approximately 168, 119, and 106 times, respectively. While the Petitioner's citations, both individually and collectively, show that field has noticed his work, he did not establish that such rates of citation are sufficient to demonstrate a level of interest in his field commensurate with sustained national or international acclaim. *See* section 203(b)(1)(A) of the Act. Moreover, the Petitioner did not show that the citations to his research represent attention at a level consistent with being among small percentage at the very top of his field. *See* 8 C.F.R. § 204.5(h)(2). The Petitioner, for instance, did not compare his citations to others in his field of endeavor that are recognized as already being at the top in his field.

In addition, while the record contains screenshots reporting on his recent research, the screenshots do not demonstrate that the Petitioner himself has garnered acclaim from this research. Rather, the screenshots specifically mention another individual, as the principal investigator and refer to the other researchers, including the Petitioner, as "colleagues." For instance, reliawire.com stated that "[a] detailed look into how brain cells communicate rapidly is being provided with help from an intricate new three-dimensional protein structure, investigator and colleagues report." Moreover, sciencedaily.com reflected that and colleagues report the results August 24 in the journal ." Furthermore, phys.org quoted and indicated that he is "the study's principal investigator" and "is a professor at and and a investigator." Although the Petitioner contributed to the research and authored the paper, the media reports do not single him out or acknowledge him for his findings. Here, the Petitioner did not establish that this media coverage is reflective of his status as an individual who has garnered "sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation." *See* section 203(b)(1)(A) of the Act.

The record also contains recommendation letters that summarize the Petitioner's research and original contributions but do not demonstrate that he is among that small percentage at the very top of his field of endeavor or that he has sustained national or international acclaim. Instead, the authors make general assertions repeating the statute and regulations. For instance, professor at , stated that "[he] feel[s] that [the Petitioner] has distinguished himself as an outstanding research leader with extraordinary ability and is at the very top of our field." Further, professor at the opined that "[he] would rate [the Petitioner's] work as some of the very best in the research of neuroscience." In addition, , mentioned above, "conclude[d] that [the Petitioner] is among one of the top scientists in our field of research." Repeating the language of the statute or regulations does not satisfy the 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*, 1997 WL 188942 at *5 (S.D.N.Y.). Here, the letters do not provide sufficient information and explanation, nor does the record include sufficient corroborating evidence, to show that the Petitioner is viewed by the overall field, rather than by a solicited few, as being among that small percentage at the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2).

The record as a whole, including the evidence discussed above, does not establish the Petitioner's eligibility for the benefit sought. The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than those progressing toward the top. USCIS has long held that even athletes performing at the major league level do not automatically meet the statutory standards for classification as an individual of "extraordinary ability." *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994). While the Petitioner need not establish that there is no one more accomplished to qualify for the classification sought, we find the record insufficient to demonstrate that he has sustained national or international acclaim and is among the small percentage at the top of his field. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2).

III. CONCLUSION

For the reasons discussed above, the Petitioner has not established his eligibility as an individual of extraordinary ability.

ORDER: The appeal is dismissed.

Cite as *Matter of R-D-*, ID# 1757953 (AAO Nov. 28, 2018)