U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 13212638

Date: JAN. 29, 2021

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Extraordinary Ability)

The Petitioner, an oncologist, 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 Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner had satisfied at least three of ten initial evidentiary criteria, as required. The matter is now before us on appeal.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 203(b)(1)(A) of the Act makes immigrant visas available to aliens 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

international 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 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).

II. ANALYSIS

The Petitioner earned his medical degrees at [redacted] University in [redacted], China, where he has since held positions of increasing authority in the Department of Oncology, including chief physician, director, and professor.

A. Evidentiary Criteria

Because the Petitioner has not indicated or 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). The Petitioner claims to have met three criteria, summarized below:

- (iv), Participation as a judge of the work of others;
- (v), Original contributions of major significance; and
- (vi), Authorship of scholarly articles.

The Director concluded that the Petitioner met the two evidentiary criteria numbered (iv) and (vi). On appeal, the Petitioner asserts that he also meets the criterion numbered (v).

After reviewing all of the evidence in the record, we agree with the Director that the Petitioner has met only two of the criteria. Below, we address the third claimed 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)

In order to satisfy this criterion, the Petitioners must establish that not only has he made original contributions, but also that those contributions 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. The phrase "major significance" is not superfluous and, thus, it has some meaning. *See*

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).

The Petitioner claims three qualifying research contributions:

- He studied "the efficacy of [redacted] in preventing [redacted] hepatitis B virus (HBV) reactivation";
- He "identified a series of [redacted] markers and [redacted]) for the prediction of . . . [redacted] cancers"; and
- He "discovered that [redacted] . . . eliminated cancer stem cells and enhanced the efficacy of conventional chemotherapeutic drugs, suggesting a novel strategy for overcoming the chemoresistance during cancer treatment."

The Petitioner asserts that the significance of his work is evident through heavy citation of his published work and "letters provided by independent experts in his field." As an example of the latter, a letter signed by a professor at the University [redacted] Cancer Center includes the following passage:

> [The Petitioner] discovered that the reduced expression of [redacted] was associated with chemoresistance and the increased risk of tumor recurrence in patience with [redacted] cancer, while the overexpression of [redacted] suppressed the growth of [redacted] cancer cells and enhanced chemosensitivity. He further elucidated the molecular mechanism and demonstrated that [redacted] exerted its function mainly through the inhibition of the [redacted] pathway. [The Petitioner's] findings identified [redacted] as a tumor suppressor [redacted] and suggested that the [redacted] axis could serve as a valuable therapeutic target for enhancing chemosensitivity and suppressing tumor recurrence in [redacted] cancer.

Apart from the speculative nature of the assertion that the Petitioner's findings "*suggested*" what "*could* serve as a valuable therapeutic target," a letter signed by the chairman of the Prostate Cancer Research and Education Foundation contains nearly identical wording:

> [The Petitioner] discovered that the reduced expression of [redacted], was associated with chemo-resistance and the increased risk of tumor recurrence in patience with [redacted] cancer, while the overexpression of [redacted] suppressed the growth of [redacted] cancer cells and enhanced chemo-sensitivity, with [redacted] exerting its function mainly through the inhibition of the [redacted] pathway. This work highlighted the [redacted] axis as a valuable therapeutic target for enhancing chemo sensitivity and suppressing tumor recurrence in [redacted] cancer.

These similarities strongly suggest common authorship. *See Mei Chai Ye v. U.S. Dep't. of Justice*, 489 F.3d 517, 519 (2d Cir. 2007) (concluding that an immigration judge may reasonably infer that when an asylum applicant submits strikingly similar affidavits, the applicant is the common source). In evaluating the evidence, the truth is to be determined not by the quantity of evidence alone but by its quality. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (quoting *Matter of E-M-*, 20

I&N Dec. 77, 80 (Comm'r 1989). This evidence necessarily raises questions about who actually wrote (rather than signed) the other submitted letters.

The remaining letters describe different work by the Petitioner, but fit the same pattern of describing specific findings in technical detail without explaining how they are of major significance (rather than merely interesting or useful). For instance, an assistant professor at the University [redacted] states that the Petitioner "identified the underlying mechanism by which [redacted] suppressed the transcription of [redacted] by increasing the [redacted] promoter," but does not explain why this particular finding is more significant than the findings published in many other articles each year.

A senior scientist at the U.S. Food and Drug Administration states that the Petitioner's "work has been adopted by the [redacted] and the [redacted] [redacted]) in their guidelines for international physicians," but does not elaborate. Other documents in the record show that the Petitioner is a co-author of one of 60 articles cited in the bibliography of an article in an [redacted] journal, establishing '[redacted]' for [redacted] [redacted]' and one of more than 200 articles cited in an article in an [redacted] journal, setting forth '[redacted].'" The [redacted] article cites the Petitioner's paper to support the observation that "[redacted] is more effective than [redacted] for the prevention of HBV reactivation associated with [redacted] chemoimmunotherapy." The [redacted] article cites the Petitioner's work to show that "recent studies suggest that [redacted] can be successfully used in [chronic HBV] patients." The record does not include information from either the [redacted] or the [redacted] which would support a finding that citations of this type are indicative of contributions of major significance. Because each article cites dozens or hundreds of sources for guidelines on relatively narrow topics, it is reasonable to infer that the organizations' complete guidelines rely on a substantially greater number of sources.

The articles establishing the clinical guidelines do not indicate that the Petitioner developed the drugs discussed, or discovered new applications for them. Rather, they cite an article in which the Petitioner and his collaborators discussed a clinical trial of drugs already in use to treat hepatitis B. The record shows that the citation rate of the Petitioner's article places it among the top 1% of articles in its field from 2014. This is not an insignificant citation rate, but the record does not sufficiently establish the nature and extent of the Petitioner's contributions to the paper. The Petitioner was one of 15 authors of the paper, which described a clinical trial involving more than 60 patients [redacted] [redacted] Given the size of the undertaking, the burden is on the Petitioner to specify the nature of his involvement in the study. There is no presumption that he conceived, designed, or directed the study, rather than received author credit by virtue of treating and collecting data from some of the patients involved in the study. We note that, although various individuals have signed letters on the Petitioner's behalf, the principal authors of the highly-cited articles are not among those individuals.

On appeal, the Petitioner states that three of his other articles have amassed citations placing them in the top 1% for their respective years of publication. For the reasons discussed below, these articles do not establish that the Petitioner has made original contributions of major significance:

- The Petitioner is one of 10 authors of a 2010 article describing a clinical trial that spanned several institutions and involved 140 patients. The record establishes that the Petitioner was

one of several participating physicians, but does not specify the nature of his contributions to the study described in the paper.

- A 2014 article about [ ] profiling and [ ] cancer. The Petitioner previously submitted the first page of this article among many other examples of his work, but did not discuss this article. The submitted letters do not mention the research behind this article. On appeal, the Petitioner does not explain how it relates to any of the three identified contributions that he specifically claims to be of major significance.
- A 2017 article associating the reduced expression of [ ] with chemoresistance. This article, which we discussed above, is the subject of the passage that appeared in more than one letter. This article has a much lower citation count, but reached the top 1% of citations because it was published less than two years before the petition's September 2018 filing date, and even low citation numbers can reach high percentages in the time immediately following publication.

The Petitioner has not presented a consistent, specific, and fully corroborated claim regarding the significance of his contributions. Therefore, the Petitioner has not satisfied the requirements of the criterion at 8 C.F.R. § 204.5(h)(3)(v).

III. CONCLUSION

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. As a result, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. Nevertheless, we advise that we have reviewed the record in the aggregate, concluding that it does not support a conclusion that the Petitioner has established the acclaim and recognition required for the classification sought.

The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward the top. In this instance, the Petitioner has satisfied the plain wording of two of the regulatory criteria through activities that are routine in the field of medical research – specifically, authorship of scholarly articles and peer review of articles written by others. A few of his co-authored articles have received a significant number of citations, but, as explained above, the Petitioner has not shown that his specific contributions to those papers are of major significance in the field. Participation in an influential study does not inherently meet this high threshold. Letters submitted to support the petition describe the findings from some of the Petitioner's papers, but do not detail the Petitioner's contributions to those articles or establish their significance other than in general and speculative terms. Furthermore, as discussed above, the provenance of the letters is questionable.

Here, the Petitioner has not shown that the significance of his work is indicative of the required sustained national or international acclaim or that it is consistent with a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate that the Petitioner is among the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2).

For the reasons discussed above, the Petitioner has not demonstrated his eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.