U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28963434

Date: APR. 2, 2024

Appeal of Texas Service Center Decision

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

The Petitioner is a computer scientist specializing in medical imaging and computer vision who 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 Texas Service Center Director denied the Form I-140, Immigrant Petition for Alien Workers (petition), concluding the record did not establish that the Petitioner had a major, internationally recognized award, nor did it demonstrate that he met at least three of the ten regulatory criteria. The matter is now before us on appeal. The Petitioner bears the burden of proof to demonstrate eligibility to U.S. Citizenship and Immigration Services (USCIS) by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). We review the questions in this matter *de novo*. *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will dismiss the appeal.

I. LAW

To qualify under this immigrant classification, the statute requires the filing party demonstrate:

- The foreign national enjoys extraordinary ability in the sciences, arts, education, business, or athletics;
- They seek to enter the country to continue working in the area of extraordinary ability; and
- The foreign national's entry into the United States will substantially benefit the country in the future.

Section 203(b)(1)(A)(i)–(iii) of the Act. 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, 1121 (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 Amin v. Mayorkas*, 24 F.4th 383, 394 (5th Cir. 2022).

II. ANALYSIS

The Petitioner earned a foreign bachelor's degree in engineering, a master's degree in statistics, and from [redacted] a Ph.D. in computer science. He specializes in machine and deep learning models relating to medical post-processing imaging in computer vision. The goal in this work is to divide an image into different meaningful and distinguishable regions or objects, then to offer quantitative analysis of those images.

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). Before the Director, the Petitioner claimed he met three of the regulatory criteria. The Director decided that the Petitioner met the requirements for two of the criteria relating to judging and the authorship of scholarly articles, but that he had not satisfied the criterion associated with original contributions of major significance. On appeal, the Petitioner maintains that he meets the evidentiary criteria relating to contributions. After reviewing all the evidence in the record, we conclude he has not satisfied the contributions criterion, meaning he has not met the required three evidentiary criteria to warrant a final merits analysis.

> *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 Petitioner provided several forms of evidence relating to his citation record and his findings within that work, and several letters of support from others in his field. The Director determined that the Petitioner did not satisfy the requirements of this criterion.

The primary requirements here are that the Petitioner's contributions in their field were original and they rise to the level of major significance in the field as a whole, rather than to a project or to an organization. *See Amin*, 24 F.4th at 394 (citing *Visinscaia v. Beers*, 4 F. Supp. 3d 126, 134 (D.D.C. 2013)). The regulatory phrase "major significance" is not superfluous and, thus, it has some meaning. *Nielsen v. Preap*, 139 S. Ct. 954, 969 (2019) (finding that every word and every provision in a statute is to be given effect and none should needlessly be given an interpretation that causes it to duplicate

another provision or to have no consequence). Further, the Petitioner's contributions must have already been realized rather than being potential, future improvements. Contributions of major significance connotes that the Petitioner's work has significantly impacted the field. The Petitioner must submit evidence satisfying all of these elements to meet the plain language requirements of this criterion.

We agree that the Petitioner is accomplished and some of his work has garnered several citations. However, beyond offering accurate and reliable research that others in the field rely on in their own work, what the Petitioner does not present is the next step required here in showing how those citation rates have been of major significance in the broader field. Where he falls short is the Petitioner does not parlay his citation record into a discernable significant impact in the field as a whole.

Generally, it is not enough to satisfy this criterion's requirements for this Petitioner to compare his entire publication citation totals to a group of researchers that he characterizes as "extraordinary" or "the most well-respected contributors to the field." As the Director noted in the denial, comparing overall citation rates of individuals is more appropriate to the final merits determination, where it can serve as a metric of acclaim and renown within the field. The Petitioner focuses on his total number of citations comparing that recognition to other researchers in his field. A more apt metric under this criterion would be comparing citations to one of the Petitioner's individual published articles (as opposed to all of his work) with other researchers' single published papers in his specialized field.

We view a comparison of citations to individual scientific articles to be more relevant for this criterion to establish the overall field's general view of a contribution of major significance. *See generally* 6 *USCIS Policy Manual* B.1, https://www.uscis.gov/policymanual (providing that "published research that has provoked widespread commentary on its importance from others working in the field, and documentation that it has been highly cited relative to others' work in that field, may be probative of the significance of the person's contributions to the field of endeavor"). We note agency policy here does not reference the entire body of work of other researchers compared with a petitioner's body of work as he advances in this petition. Rather, USCIS policy focuses on whether a petitioner's individual published article is highly cited relative to other researcher's individual work in the field.

We also note the Petitioner relied on evidence originating from OpenAlex in support of his comparison to other researchers. The appeal brief reflects the following:

> He also presented quantitative data from OpenAlex that compares his research impact to the respective research impacts of others in his field []. As a reminder, OpenAlex data contextualizes [the Petitioner's] place at the forefront of this field in ways that Google Scholar cannot, and it establishes that [his] publication and citation rates place him among the top 0.14% of researchers in the computer science field in terms of citation impact []. This evidence extends far beyond average citation rates for the category of Computer Science, indicating that USCIS has failed to evaluate all of the relevant evidence of record.

Later in the appeal brief, the Petitioner claims his citation record positions him at the top of his field again relying on data from "OpenAlex, which indicates that [his] citation record places him among the top 0.11% of researchers in the computer science field in terms of citation impact." The graphical

image the Petitioner presented to support this figure indicates these statistics relate to an "In-Field Author Citation Impact for Publications between 2015 and 2023."

We find several issues diminishing the evidentiary value of the Petitioner's claims stemming from the material from OpenAlex. Setting aside the slightly conflicting statistics (.14 versus .11), the evidence the Petitioner offered in the record from OpenAlex is undated, and considering his own graph, the statistics included his work through some unknown point in 2023. This postdates the petition filing date in 2022 and because he must demonstrate eligibility based on the facts as they existed on the date he filed the petition, this material from OpenAlex is significantly diminished. 8 C.F.R. § 103.2(b)(1) (requiring petitioners to establish they have satisfied all eligibility requirements for the immigration benefit from the time of the petition filing).

More importantly, because of the evidentiary shortcomings with this material, we attempted to reproduce the Petitioner's results on OpenAlex, but we were unable to do so. Also, the material the Petitioner submitted reflected he crafted the search to focus on computer science as the field, and this factor is corroborated in his appellate statement we quote above. But OpenAlex has additional tools to further specify a researcher's area of expertise, and it contains one that appears to directly align with the Petitioner's area, "Computer Vision and Pattern Recognition." The Petitioner did not explain why he specified a search parameter in OpenAlex that was different than his specialty, and it is unclear how that shift in terminology might have affected the search results in this online database.

Related to those differing parameters, the Petitioner did not show how OpenAlex calculates the percentile figures he provided. While we do not imply that the Petitioner here has manipulated the data in his favor, the failure to essentially "show the work" of how OpenAlex calculates its results leaves open that possibility, and doing so falls short of the Petitioner satisfying his burden of proof when relying on this material. All of these factors further reduce the reliability of the material from OpenAlex and it will not serve to demonstrate he has satisfied this criterion's requirements.

We now turn to the letters the Petitioner provided, each of which should describe how his efforts have effected a significant impact in the field as a whole. The first support letter is from [redacted] Professor of Cognitive Science and Computer Science at [redacted] Professor [redacted] described the Petitioner's work in the early detection of pancreatic tumors. He portrayed the unique method the Petitioner utilized along with its effectiveness. Professor [redacted] characterized this work as a step forward for medical imaging that has a variety of applications. He indicated the Petitioner's 3D course-to-fine segmentation method has improved the field's ability to efficiently determine the probability of pancreatic cancer in abdominal CT scans. However, Professor [redacted] did not offer additional information speaking to the extent that this method has improved the field's ability to accurately recognize cancer in CT scans.

He also discussed the Petitioner's work assessing lymph nodes status, concluding that when his system was evaluated on a data set of esophageal cancer patients, the system demonstrated a high rate of effectiveness. But the professor still did not offer an indication of how this has impacted the field; only that the Petitioner's methods have been successful and an improvement. Professor [redacted] closed his letter noting researchers are recognizing the originality of the Petitioner's research and are taking notice, that his work is of interest to a variety of researchers, and that his research is wholly original. He also noted the Petitioner's overall record demonstrates his ability to produce credible and relevant

research for the United States and for the computer science field. But still lacking was an explanation reflecting the Petitioner has contributed to the field at a level commensurate with this criterion's requirements.

Next, [redacted] Research Scientist for [redacted] in Canada described some of the Petitioner's work, noting its success and effectiveness, and claiming it has been highly valuable and that other researchers find the Petitioner's findings trustworthy and accurate. [redacted] stopped short of explaining how the Petitioner's work has actually impacted the field. Similarly, [redacted] a research scientist at [redacted] explained the Petitioner's methodology of pancreatic cancer early detection is vital to the United States and that he is uniquely positioned to benefit the entire medical community. [redacted] continued that the Petitioner's research is proven to have wide applications in a variety of medical imaging, not just pancreatic cancer. But much like the above letters, [redacted] did not offer details of how the Petitioner has already spawned a significant impact within the field as a whole.

In a similar vein, [redacted] Adjunct Professor at [redacted] of Science and Technology described the Petitioner's work as the cutting edge of developing accurate 3D shape retrieval, as well as beneficial to a variety of sectors. But simply being on the cutting edge, without some discernible and significant impact in the field, is premature when it comes to this criterion's mandates.

Responding to the RFE, the Petitioner provided additional letters. The first from [redacted] a physician at the [redacted] Hospital in Taiwan who claimed two of his projects relied on the Petitioner's published work, and that his contributions to the advancement of medical imaging and radiation therapy technology have had a major influence on head and neck and esophageal cancer. But [redacted] did not further describe the manner or extent to which those contributions have already influenced the field. While [redacted] indicated the Petitioner's automatic segmentation algorithms for organs at risk are currently being integrated into the PACS system of a private company, he did not explain what the acronym PACS represents, but more importantly, the record lacks an indication of how this has impacted the broader field. [redacted] then described some of the Petitioner's work as pioneering and he claimed it had delivered significant performance improvements, but still no information of how the field has been affected.

Lastly, is the letter from [redacted] of the [redacted] described how the Petitioner's software has been successfully implemented in the radiation treatment planning system at his hospital. He indicated the Petitioner's software and algorithm have enabled his hospital to accurately delineate lymph node growth tumor volumes and organs at risk, leading to more precise and effective treatment plans for their patients. While [redacted] states the Petitioner's technology has garnered attention from top medical technology companies, we note the Petitioner did not provide evidence showing his work has been sufficiently incorporated by additional medical facilities such that it demonstrates a contribution of major significance in the field as a whole.

In short, we have no doubt that the Petitioner is an accomplished researcher who has made original discoveries with the potential to have the type of impact in his field that would allow him to meet this criterion's mandates. But the evidence does not lead us to the conclusion that the required impact has already been achieved. The record does not include adequate corroborating documentation to demonstrate the nature of the contributions the Petitioner has made to the field that are of major

significance. We agree with the Director's ultimate conclusion that the Petitioner has not submitted adequate evidence that meets the plain language requirements of this criterion.

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 do not need to 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 it does not support a finding 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 that goal. USCIS has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994). Here, the Petitioner has not shown the significance of their 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). Moreover, the record does not otherwise demonstrate that the Petitioner has garnered national or international acclaim in the field, and they are one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) and 8 C.F.R. § 204.5(h)(2).

For the reasons discussed above, the Petitioner has not demonstrated their eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.