U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22643167

Date: NOV. 22, 2022

Appeal of Texas Service Center Decision

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

The Petitioner, an [redacted] biologist, seeks to classify as an individual 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 the record did not establish that the Petitioner met the initial evidence requirements for the classification at 8 C.F.R. § 204.5(h)(3)(v) by establishing that the Beneficiary made original scientific, scholarly, artistic, or business-related contributions of major significance to the field. The matter is now before us on appeal.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will withdraw the Director's decision and remand this matter for the entry of a new decision consistent with the following analysis.

I. LAW

An individual is eligible for the extraordinary ability classification if they have extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and their achievements have been recognized in the field through extensive documentation; they seek to enter the United States to continue work in the area of extraordinary ability; and their entry into the United States will substantially benefit prospectively the United States. Section 203(b)(1)(A) 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 may demonstrate international recognition of a beneficiary's achievements in the field through a one-time achievement (that is, a major, internationally recognized award). Absent such an achievement, the petitioner must provide sufficient qualifying documentation demonstrating that the beneficiary 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 beneficiary 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 indicates that he is one of the few leading experts in the field of [redacted] biology and that he is well known for "his study of how the rapid [redacted] of [redacted] gene clusters enables a [redacted] aphid to colonize diverse plant species." The Petitioner indicates that he will enter the United States to continue his work in the field of [redacted] biology as a research associate with the [redacted] Institute, an entity affiliated with [redacted] University.

The Director determined that the Petitioner submitted evidence relating to three criteria:

- (iv), Participation as a judge of the work of others in the same or an allied field of specialization;
- (v), Original contributions of major significance; and
- (vi), Authorship of scholarly articles in the field in major trade publications or other major media.

The Director determined that the Petitioner submitted evidence satisfying the criterion at 8 C.F.R. § 204.5(h)(3)(iv) and (vi), relating to judging the work of others in the same field and authorship of scholarly articles in the field. We agree that the Petitioner has met their burden with respect to these two criteria. Therefore, the only criteria at issue in this decision is whether the Petitioner established that the Beneficiary has made original contributions of major significance in the field.

On appeal, the Petitioner contends that the Director provided insufficient analysis with respect to whether the Beneficiary met the criteria at 8 C.F.R. § 204.5(h)(3)(v), pointing to the fact that the decision largely reiterated the request for evidence (RFE). The Petitioner emphasizes scholarly articles published by the Beneficiary and stated that they are widely cited by other researchers in the field. The Petitioner asserts that the Director ignored submitted evidence demonstrating wide citation of his scholarly articles and improperly dismissed these citations as only "moderately valuable," providing little explanation to support this conclusion. Further, the Petitioner contends that the Director did not sufficiently consider several reference letters he submitted on the record from other professors working in the Beneficiary's field. The Petitioner asserts that the number of citations to the Beneficiary's work and the provided reference letters credibly establish that his research represents an original contribution of major significance in the field.

USCIS must determine whether the Petitioner has made original contributions in the field, and if so, whether the Petitioner's original contributions are of major significance to the field. 6 *USCIS Policy Manual* F.2 (Appendix), https://www.uscis.gov/policymanual. 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 v. Beers*, 4 F. Supp. 3d at 135-136. The petitioner must submit evidence satisfying these elements to meet the plain language requirements of this criterion.

Upon review of the record, the Petitioner has satisfied the criterion at 8 C.F.R. § 204.5(h)(3)(v), relating to original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field. First, the Director's determination with respect to the criteria at 8 C.F.R. § 204.5(h)(3)(v) was conclusory and did not fully address the submitted evidence. The Director only stated that the evidence provided was not "indicative of major significance" and that it "did not demonstrate how his contributions impacted the field as whole in a major a significant way," but did not sufficiently articulate the basis of these conclusions in light of the submitted evidence. The Petitioner submitted sufficient evidence reflecting the significant citation of the Beneficiary's published materials in the field and reference letters from professors in the field credibly discussing in the detail how the Beneficiary's research impacted and guided their work. However, the Director did not provide adequate analysis of this provided documentation.

For instance, at the time the Petitioner filed the petition, the Google Scholar database showed hundreds of citations to his published original scholarly articles, with one specific article, emphasized by the Petitioner as an influential work relating to aphids, being cited 119 times. The U.S. Citizenship and Immigration Services (USCIS) *Policy Manual* states that "a goodly number" of such citations "may be probative of the significance of the person's contributions to the field of endeavor."[1] As of the date of this adjudication, hundreds more citations have appeared related to the Petitioner's work. Although the new citations do not establish eligibility at the time of filing, they do reflect the field's ongoing reliance on the Petitioner research. In addition, as discussed, the Petitioner provided several credible reference letters from professors working in the field of [redacted] biology that discuss in detail how his work influenced and guided their research into the interaction of pests and their symbiont plants, specifically how [redacted] could be a target for insect pest control. The Petitioner has established that their original contributions are of major significance to the field.

The Petitioner has, therefore, overcome the only stated ground for denial of the petition. Nevertheless, the record does not support approval of the petition, as establishing the third initial criterion does not suffice to establish eligibility for the classification. On remand, the Director must undertake a final merits determination to analyze the Petitioner's accomplishments and weigh the totality of the evidence to determine if they establish extraordinary ability in the Petitioner's 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.[2]

When considering the evidence submitted to show the Petitioner's acclaim and recognition in the field, the Director must consider whether or not the record corroborates assertions both from the Petitioner and in letters written specifically to support the petition. Further, the Petitioner's judging experience consists

[1] 6 *USCIS Policy Manual* F.2 (Appendix), https://www.uscis.gov/policymanual.

[2] *See also* 6 *USCIS Policy Manual* F.2(B)(2), https://www.uscis.gov/policymanual (stating that USCIS officers should then evaluate the evidence together when considering the petition in its entirety to determine if the petitioner has established, by a preponderance of the evidence, the required high level of expertise for the immigrant classification).

of peer review of scholarly articles for scientific journals in his field. However, peer review is a routine element of the process by which articles are selected for publication in scholarly journals. Simply participating 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.[3] Further, the fact that other researchers in the Petitioner's field are using his work in their own research satisfies the plain language requirements within the antecedent evidentiary prongs; however, the level that others are relying on his findings has not been properly demonstrated such that it could be concluded that this level of achievement rises to the level of this classification's overall requirements. The Director must keep such factors in mind when weighing the record and completing a final merits determination.

III. CONCLUSION

Because the Petitioner has overcome the only stated ground for denial, we remand this proceeding so that the Director can render a final merits determination in keeping with the *Kazarian* framework.

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.

[3] *See* 8 C.F.R. § 204.5(h)(2).