U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22993456

Date: OCT. 21, 2022

Appeal of Nebraska Service Center Decision

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

The Petitioner, a radiologist, seeks classification 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 Nebraska Service Center denied the petition, concluding that although the record established that the Petitioner satisfied the initial evidentiary requirements, it did not establish, as required, that the Petitioner has sustained national or international acclaim and is an individual in the small percentage at the very top of 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. 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 individuals with 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; who seek to enter the United States to continue work in the area of extraordinary ability; and whose 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 the initial evidence requirements through either a one-time achievement or meeting three lesser criteria, 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

When the Petitioner filed the petition, she was employed as a clinical assistant professor at [redacted] University [redacted] School of Medicine, and an assistant attending physician at [redacted] Hospitals, in O-1A nonimmigrant status. Subsequently, [redacted] Center filed a nonimmigrant petition, approved in August 2022, again to classify her as an O-1A nonimmigrant. In May 2021, the Petitioner filed another immigrant petition on her own behalf, seeking classification as a member of the professions holding an advanced degree, with a national interest waiver of the job offer requirement. The Director of the Nebraska Service Center approved that petition in February 2022.

A. Evidentiary Criteria

Because the Petitioner has not indicated or shown that she received a major, internationally recognized award, she must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x). The Petitioner initially claimed to have satisfied eight of these criteria, summarized below:

- (i), Lesser nationally or internationally recognized prizes or awards;
- (ii), Membership in associations that require outstanding achievements;
- (iii), Published material about the individual in professional or major media;
- (iv), Participation as a judge of the work of others;
- (v), Original contributions of major significance;
- (vi), Authorship of scholarly articles;
- (viii), Leading or critical role for distinguished organizations or establishments; and
- (ix), High remuneration for services.

The Director concluded that the Petitioner met four of the criteria, pertaining to judging, contributions, scholarly articles, and leading or critical roles. On appeal, the Petitioner asserts that she also meets the criteria pertaining to membership in associations and published material about her.

Upon review of the record, we agree with the Director that the Petitioner has satisfied at least three of the threshold criteria at 8 C.F.R. § 204.5(h)(3). Because the Petitioner submitted the required initial evidence, we need not discuss the individual criteria in further detail. Instead, below, we will evaluate whether she has demonstrated, by a preponderance of the evidence, her sustained national or international acclaim and that she is one of the small percentage at the very top of the field of endeavor, and that her achievements have been recognized in the field through extensive documentation.

B. Final Merits Determination

In a final merits determination, we analyze a petitioner's accomplishments and weigh the totality of the evidence to determine if their successes are sufficient to demonstrate that they have 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.[1] In this matter, we determine that the Petitioner has not established eligibility.

Some of the appeal concerns individual threshold criteria at 8 C.F.R. § 204.5(h)(3). The final merits determination, however, addresses the broader question of whether the record, as a whole, establishes that the Petitioner has earned sustained national or international acclaim in her field. Further discussion of the specific requirements of additional criteria would not directly affect the remaining issue of sustained national or international acclaim.

Throughout the appeal, the Petitioner conflates the initial evidentiary criteria and the final merits determination, asserting that, by satisfying those initial criteria, "she has achieved national acclaim." For instance, she asserts on appeal that her "numerous publications and her status as First Author on most of these publications clearly indicate that she has risen to the top of her field and has achieved national acclaim." The Petitioner does not explain, on appeal, how either of these factors inherently convey or reflect sustained national or international acclaim.

The Petitioner contends that "[a] physician must be recognized as a true expert and leader on the topic in order to be First Author." But, by definition, every collaborative article has a first author. Depending on the method used to determine the order of author credits, the first author of a given article may have led the individual project or study that forms the basis for that article, but the comparison is necessarily limited to the co-authors of that single article; it does not reflect or imply any higher standing in the field overall.

To support her assertions about first authorship, the Petitioner cites two previously submitted letters from two of her mentors, [redacted] of [redacted] Health System and [redacted] of the [redacted] University of [redacted] Those letters, however, do not equate first authorship with broader acclaim or recognition. [redacted] simply acknowledged that the Petitioner was first author of their shared paper. [redacted] stated that, as first author, the Petitioner "had a leading role in the research, writing, and conduct *of the project*." This assertion is considerably more limited in scope than the expansive proposition offered on appeal, that a high proportion of first author credits indicates national acclaim at the top of the field.

It bears noting that other information in those letters indicate that [redacted] and [redacted] and writers of other letters in the record, each occupy positions considerably higher than the Petitioner, which is directly relevant when considering whether the Petitioner has reached the top of her field. [redacted] has held leadership roles at prestigious universities, and [redacted] served as [redacted] of the American Board of Nuclear Medicine and has "been annually selected as one of the [redacted]

[1] *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).

in America since 2005." The Petitioner asserted that her "numerous publications" also show her stature in the field, but she has not shown that the quantity of articles written is a reliable gauge of acclaim. Even then, whereas her own *curriculum vitae* showed 20 peer-reviewed articles at the time of filing, [redacted] claimed 78 such articles, and [redacted] "more than 250." These individuals have sincerely attested to the Petitioner's talent and dedication, but the Petitioner has not shown that her stature in the field is comparable to theirs. These individuals did not attest to the Petitioner's sustained national or international acclaim, instead offering more measured assertions that she "has made innumerable contributions to the field of nuclear medicine" and "is clearly respected by her peers." Other letters in the record follow a similar pattern, praising specific achievements and offering general assertions such as stating the Petitioner's "research has been cited numerous researchers," without providing objective means of measuring the Petitioner's relative stature in the field.

When considering the question of where the Petitioner stands in relation to others in the field, it is significant that her claimed prizes and awards are for fellows and residents in advanced stages of professional training, rather than for already-established experts in the field. The Petitioner may have achieved more than most in the earliest stages of her career, but she must establish sustained national or international acclaim in the field as a whole, rather than in the subset of the youngest or newest practitioners in that field.

The Director had noted that the Petitioner's most-cited article had earned only 14 citations at the time of filing; her aggregate total number of citations was 85. On appeal, the Petitioner states that the Director "dismissed the impressive number of citations of [the Petitioner's] published work and mistakenly held that 'citations to one's published works does [*sic*] not equate to national or international acclaim.'" By disputing the Director's quoted language, the Petitioner essentially contends that citations *do* "equate to national or international acclaim." The Petitioner has not shown this to be so.

The Petitioner cites *Kazarian* and the *USCIS Policy Manual* regarding the value of citations, but neither of those sources indicates that every cited author is nationally or internationally acclaimed. The *USCIS Policy Manual* indicates that citations "*may* be indicative of the significance of the person's contributions," and that the quantity of those citations is another relevant factor. 6 *USCIS Policy Manual* F.2 appendix, https://www.uscis.gov/policymanual. In *Kazarian*, the Ninth Circuit stated that "other authors' citations (or a lack thereof) *might* be relevant to the final merits determination." *Kazarian*, 596 F.3d at 1121. These passages support, rather than refute, the Director's conclusion that "citations to one's published works do[] not equate to national or international acclaim." Citations are one factor to be considered among many.

The Petitioner cites no comparative figures to establish that she has accumulated an "impressive number of citations" relative to others in her field. Instead, the Petitioner focuses on one particular citation. The Petitioner states that one of her articles was "cited and discussed in the Clinical Practice Guidelines of the National Comprehensive Cancer Network" (NCCN), which "set the standard for the most appropriate clinical care across the United States and internationally." The record shows that an article by the Petitioner is one of 144 sources cited in the *NCCN Guidelines for* [redacted]. The Petitioner has not met her burden of proof to show that the inclusion of her article among these sources "sets her apart from her peers as one of a small percentage of nuclear medicine physicians who has risen to the top of her field, as she is looked to as the leading national expert on the treatment

of this disease." The Petitioner has not established that the NCCN only cited the work of "leading national expert[s]" when compiling source material.

We further note that the *Guidelines*, as submitted, show a publication date of September 2021, several months after the Petitioner filed her petition in May 2021. Therefore, even if this citation had the weight that the Petitioner contends, it still would not help to establish eligibility as of the filing date as required by 8 C.F.R. § 103.2(b)(1), which requires a petitioner to meet all eligibility requirements at the time of filing.

Congress contemplated that individuals who qualify for this criterion will be able to show a "career of acclaimed work in the field." H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A)(i) of the Act, which requires "extensive documentation" of recognition. The Petitioner has not met this burden. The record often lacks evidentiary support for the Petitioner's claims regarding the significance of various achievements and events. For instance [redacted] asserted that the Petitioner's "outstanding achievements" resulted in her selection as a committee member for the Society of Nuclear Medicine and Molecular Imaging (SNMMI), but the record contains no contemporaneous documentation relating to the nomination and selection of the Petitioner or the more than 20 other members of that committee. The SNMMI's bylaws identify who may nominate committee members but do not specify minimum requirements for such memberships. Likewise, the Petitioner asserts that her recognition is evident from having been "invited to present at prestigious national conferences," but she cites no record exhibits to show that these invitations resulted from sustained national or international acclaim rather than from lesser considerations such as subject matter expertise, preexisting relationships with conference organizers, or open calls for submissions.

Similarly, the Petitioner has established her involvement in peer review of manuscripts submitted for publication in scholarly journals, but she has not met her burden of proof to support her claim that "peer review of prominent, national and international medical journals is similar to judging a national competition for top athletes." The Petitioner has not submitted evidence to show that the process for selecting peer reviewers, at the journals where she has conducted such review, is comparable to the process for selecting judges for national athletic competitions, and she has not rebutted the Director's core determination that "[p]eer review is routine in the field; not every peer reviewer enjoys sustained national or international acclaim."

The Petitioner has conducted research at prestigious institutions, and in this way she has contributed to her field, but the Petitioner has not shown that, in doing so, she has attained sustained national or international acclaim. The Petitioner contends that her acclaim is evident from publicity that her work has received, but the submitted articles do not single her out for notice or explain how the Petitioner's work is of particular significance; they do little more than summarize the petitioner's articles. One of these articles, in *Medpage Today*, is labeled as having been "created . . . on behalf of an advertiser." The Petitioner, who bears the burden of proof, has not established or explained how articles of this kind are tantamount to sustained national acclaim, or how they show that the Petitioner's work has attracted an unusually high level of interest in the field, such that she derived sustained national acclaim from that research as she asserts.

For the reasons discussed above, we conclude that the Petitioner has not met her burden of proof to establish eligibility for the classification she seeks.

C. O-1 Nonimmigrant Status

We note that the record reflects that the Petitioner received O-1 status, a classification reserved for nonimmigrants of extraordinary ability. Although U.S. Citizenship and Immigration Services (USCIS) has approved two O-1 nonimmigrant visa petitions filed on behalf of the Petitioner, the prior approvals do not preclude USCIS from denying an immigrant visa petition which is adjudicated based on a different standard – statute, regulations, and case law. Many Form I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *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). Furthermore, our authority over the USCIS service centers, the office adjudicating the nonimmigrant visa petition, is comparable to the relationship between a court of appeals and a district court. Even if a service center director has approved a nonimmigrant petition on behalf of an individual, we are not bound to follow that finding in the adjudication of another immigration petition. *Louisiana Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, at *3 (E.D. La. 2000).

III. CONCLUSION

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. 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 that the recognition of her work is indicative of the required sustained national or international acclaim required by section 203(b)(1)(A) of the Act or demonstrates a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990). Moreover, the record does not otherwise demonstrate that the Petitioner is one of the small percentage who has risen to the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2). Rather, the record indicates that the Petitioner has trained at prestigious institutions, where she has had the opportunity to participate in influential research, but the Petitioner has not met her burden of proof to show that the recognition from her involvement in that research has resulted in sustained national or international acclaim.

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

ORDER: The appeal is dismissed.