U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF P-S-, INC.

DATE: FEB. 15, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a memory storage company, seeks to classify the Beneficiary 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 the Beneficiary had satisfied two of the initial evidentiary criteria, of which she must meet at least three.

On appeal, the Petitioner submits a brief, stating that the Beneficiary satisfies at least three criteria.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 203(b)(1)(A) of the Act makes visas available to qualified 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 Beneficiary is a member of the technical staff at a company that develops and manufactures solid-state memory storage devices for large, enterprise data centers. Because the Beneficiary has not indicated or established that she has received a major, internationally recognized award, she must satisfy at least three of the ten criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). In denying the petition, the Director found that the Petitioner met only two criteria.

On appeal, the Petitioner maintains that the Beneficiary meets three additional criteria. We have reviewed all of the evidence in the record, and conclude it does not support a finding that the Petitioner satisfies the plain language requirements of at least three criteria.

A. Evidentiary Criteria

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. 8 C.F.R. § 204.5(h)(3)(i)

The Petitioner contends that the Beneficiary meets this criterion based on an award she received at the [redacted] which is part of the [redacted] on [redacted]. Specifically, the record reflects that the Beneficiary and her team received a bronze prize in "[redacted]" one of

ten categories in the competition. The Petitioner noted that [redacted] is part of the annual [redacted] which is the "primary European forum for academics and industrial researchers working on topics relating to software science." The Petitioner also provided screenshots and general background information relating to the conference and explained that 35 teams from 16 countries participated in the competition. The Petitioner emphasizes the status of both the [redacted] conference[1] and [redacted] and it notes that the [redacted] results were published in the conference proceedings. However, the record does not sufficiently establish that third place in the [redacted] category of the software verification competition within this conference is a nationally or internationally recognized prize for excellence in the field consistent with this regulatory criterion.

In addition, the Petitioner contends that the Director erred by discounting the bronze award at the [redacted] conference as academic in nature and finding that it accepts only students and early career professionals. Instead, the Petitioner attests that the conference accepts researchers and developers in the software verification community. Regardless, the Petitioner has not sufficiently explained or established the award's national or international recognition as an award for excellence in the field, nor does the record otherwise demonstrate such recognition. For the reasons discussed above, the Petitioner did not establish that the Beneficiary meets this criterion.

> *Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.* 8 C.F.R. § 204.5(h)(3)(iv).

The Director found that the Beneficiary participated as a judge of the work of others. The record indicated that she served as a reviewer of manuscripts for conferences and professional publications, such as the [redacted] Accordingly, we agree with the Director's determination that she meets this 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).

The Petitioner contends that the Beneficiary meets this criterion based on her development of the software verification tools [redacted] and [redacted] It asserts that the Beneficiary's scholarly articles published in top journals, her high citations to her articles, and three recommendation letters demonstrate her eligibility. In order to satisfy the regulation at 8 C.F.R. § 204.5(h)(3)(v), a petitioner must establish that not only has she made original contributions but that they 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.

[1] The Petitioner provided evidence that [redacted] is ranked [redacted] out of [redacted] computer science conferences.

Regarding her scholarly articles, the Petitioner claims that the publication of her research in leading journals and conferences is evidence of its importance, but the record does not sufficiently demonstrate that her written work has been considered of major significance in the field. The Petitioner states that her published articles are in top ranked journals and conferences. First, we note that the regulations contain a separate criterion concerning the authorship of scholarly articles in professional publications. 8 C.F.R. § 204.5(h)(3)(vi). Publications and presentations are not sufficient evidence under 8 C.F.R. § 204.5(h)(3)(v) absent evidence that they were of "major significance" in the field. *See Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009), *aff'd in part* 596 F.3d at 1115. There is no presumption that every published article is a contribution of major significance in the field; rather, a petitioner must document the actual impact of her articles. Here, although the information provided shows that she was published in highly regarded journals and conferences, such evidence does not show how her articles, once published, have had major significance in the field.

The Petitioner offered documentation indicating that, at the time it filed the petition in 2017, the Beneficiary's written work had garnered approximately 138 citations, including her highest cited article with 29 citations. The Petitioner emphasizes on appeal that that the Beneficiary published two papers on the [redacted] software verification tool in 2015 that were within the top 0.1% of most-cited papers in computer science in that year of publication. The evidence, however, does not adequately support this assertion. The record includes a 2005-2015 [redacted] chart showing baselines and percentiles for various research fields, including Computer Science. According to that chart, a 2015 computer science article that had garnered six citations would be among the top 0.1% of most-cited papers for that publication year. However, the chart itself was published in 2015, so it does not capture citations that occurred after 2015.[2] While the Petitioner asserts that the Beneficiary's two 2015 articles fall into the 0.1% category because they have 8 and 10 citations, respectively, it has not provided sufficient documentation to show whether her articles have garnered at least 6 citations in 2015. Similarly, while the Petitioner claims that a 2011 paper the Beneficiary wrote about [redacted] is among the top 10% of most cited papers with 29 citations, it has not demonstrated how many of those citations fell within the time period of the [redacted] report to support that assertion. Regardless, and more importantly, the Petitioner has not shown that the above levels of citation are indicative that the Beneficiary's software verification tools constitute contributions of major significance in the field.

On appeal, the Petitioner notes that she also provided recommendation letters regarding her contributions. Upon review of the three submitted letters, they discuss the Beneficiary's original contributions but do not provide sufficient evidence of her work's major significance in the field. For example, [redacted] professor of computer science at the [redacted] explained that the Beneficiary developed [redacted] a software verification and model checking tool, which helped her discover a design defect in the source codes of a [redacted] protocol. He also noted that the Beneficiary developed a "novel method for managing state space explosion in [redacted]

[2] Put in another way, the chart indicates a 2015 article that had already garnered six citations during the year 2015 would be among the top 0.1% of most-cited papers.

Although he describes her original contributions and the new developments she found, the letter does not sufficiently explain their major significance in the field.

In addition, a letter from professor at the stated that the Beneficiary's "contribution to software verification involved developing tools that verify concurrent programs written in multiple programming languages all at once." He further attested that he "personally uses as part of my own -funded research, and instruct on as in my graduate research studies." Further, professor at the explained the Beneficiary's contribution as the leader and main developer of and stated "I also use in my research project of verifying Open Map programs." also noted that he is aware of the usage of at the ' collaboration with and the funded by the Although the authors indicate that the Petitioner's research has helped their own work and attest that others have also used they did not sufficiently show or describe how the research has widely impacted the field, so as to demonstrate original contributions of major significance. *See Visinscaia*, 4 F. Supp. 3d at 134-35 (upholding a finding that a ballroom dancer had not met this criterion because she did not corroborate her impact in the field as a whole).

Further, the letters highlight that conferences invited the Beneficiary to present her research findings and journals asked her to be a peer reviewer. For example, the letter from stated that the Beneficiary has "published her very exciting findings through leading academic journals and presented them at specialist conferences, and many journal publishers and conference organizers have sought her expertise in reviewing articles by peer scientists for publication." The letter from also asserts that she published three papers on "which drew immediate attention from the software verification community, including myself." However, the authors do not sufficiently explain how the Beneficiary's conferences or peer reviews have impacted or influenced the field to establish original contributions of major significance. Participation in a conference demonstrates that her findings were shared with others, but being chosen to present in-and-of-itself does not indicate the major significance of her contribution. Here, the Petitioner has not shown that the Beneficiary's presentations or peer review rise to a level of original contributions of major significance in the field.

Finally, the Petitioner contends that the Beneficiary and her team were awarded two grants from the In reviewing the grants, the Beneficiary was not listed as an investigator but rather as a team member. The Petitioner has not established that the grants were awarded based on, or otherwise reflective of, the major significance of the Beneficiary's past work. Nor does the record show that the Beneficiary's work on the grant projects themselves resulted in contributions of major significance in the field.

The phrase "contributions of major significance" connotes that an individual's work has significantly impacted the field. *See Visinscaia v. Beers*, 4 F. Supp. 3d at 135-136. As discussed above, the Petitioner has not shown through the Beneficiary's citation history or other evidence that her work,

once published or presented, has been of major significance in the field. Accordingly, the Petitioner did not establish that she satisfies this criterion.

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media. 8 C.F.R. § 204.5(h)(3)(vi).

As discussed above, the Beneficiary authored articles that were published in conferences and professional journals, such as the 2015 Therefore, the Director found that the Beneficiary satisfied this criterion, and we agree with that determination.

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field. 8 C.F.R. § 204.5(h)(3)(ix).

The Petitioner submitted an offer letter indicating that the Beneficiary earns $150,000 per year, and that she received 6,000 restricted stock units that will be vested in the future. As evidence that she commands a high salary compared to others in her field, the Petitioner presented documents from the U.S. Bureau of Labor Statistics (BLS) and On appeal, the Petitioner acknowledges that the submitted salary data does not take into account stock options, but contends that the record shows the Beneficiary's high compensation in her field based solely on her annual salary.

The data relates to senior software engineers, reflecting that the median salary for this position is $106,720 per year nationally, and indicating that the salary for this position is higher where the Petitioner is located, with a "Pay Difference" of +34% for California. In addition, the Petitioner submitted a BLS survey for "Software Developers, Systems Software" that shows a national median annual wage of $105,570 with those in the 75th percentile receiving an annual salary of $131,670 and those in the 90th percentile earning $159,850.[3]

Although the Beneficiary's salary exceeds the median wage for each of these occupations, the submitted documentation does not adequately demonstrate that it constitutes a "high salary" consistent with the language of this criterion. In addition, it appears that the above wage information is for two different occupational categories and the Petitioner has not sufficiently established which, if either, provides an accurate basis for comparison with the Beneficiary's position. Finally, the Petitioner did not demonstrate that her other remuneration, such as annual bonuses or her one-time grant of stock options, constitute significantly high remuneration as compared to other individuals with a similar job position.

B. Prior O-1 Nonimmigrant Visa

We note that the record reflects that the Beneficiary previously received O-1 status, a classification reserved for nonimmigrants of extraordinary ability. Although USCIS has approved at least one O-1

[3] This survey also indicates a higher rate of compensation for the position in the Petitioner's locality.

nonimmigrant visa petition filed on behalf of the Beneficiary, the prior approval does not preclude USCIS from denying an immigrant visa petition which is adjudicated based on a different standard - statute, regulations, and case law. Many Form 1-140 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 Brothers Co. Ltd.*, 724 F. Supp. at 1103. 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 *2 (E.D. La. 2000)

III. CONCLUSION

The Petitioner has not submitted the required initial evidence that Beneficiary received a major, internationally recognized award 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 finding that the Petitioner has established the level of expertise required for the classification sought. For the foregoing reasons, the Petitioner has not shown that the Beneficiary qualifies for classification as an individual of extraordinary ability.

ORDER: The appeal is dismissed.

Cite as *Matter of P-S- Inc.*, ID# 876342 (AAO Feb. 15, 2018)