U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 5190719

Date: NOV. 29, 2019

Appeal of Nebraska Service Center Decision

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

The Petitioner 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 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 one of that 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 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 two options for satisfying this classification's initial evidence requirements. A petitioner can either demonstrate a one-time achievement (that is, a major, internationally recognized award), or 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 qualifying awards, published material in certain media, and scholarly articles). The regulation at 8 C.F.R. § 204.5(h)(4) allows a petitioner to submit comparable material if they are able to demonstrate that the standards at 8 C.F.R. § 204.5(h)(3)(i)–(x) do not readily apply to the individual's occupation.

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

A. Initial Evidence

The Petitioner is a computer scientist who identified his "Field of Expertise" as "5G (and beyond) mobile network architecture, mobile big data analytics, mobile network verification, cutting edge mobile applications, and network/system security." At the time he filed the petition in January 2018, the Petitioner identified himself as a "[p]ostdoc scholar" at the University of [redacted] Subsequent submissions indicate that, shortly before the time of filing, he had begun seeking to commercialize his work through a new company called [redacted][1]

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). In denying the petition, the Director determined that the Petitioner had met three of the initial evidentiary criteria, pertaining to judging the work of others under 8 C.F.R. § 204.5(h)(3)(iv); original contributions of major significance under 8 C.F.R. § 204.5(h)(3)(v); and authorship of scholarly articles under 8 C.F.R. § 204.5(h)(3)(vi). We will not disturb these findings. As the Petitioner has demonstrated that he satisfies three criteria, we will evaluate the totality of the evidence in the context of the final merits determination below.

[1] More recently [redacted] filed a nonimmigrant petition on his behalf in March 2019; that petition was approved shortly afterward.

B. Final Merits Determination

As the Petitioner submitted the requisite initial evidence, we will evaluate whether he has demonstrated, by a preponderance of the evidence, sustained national or international acclaim; that he is one of the small percentage at the very top of the field of endeavor; and that his achievements have been recognized in the field through extensive documentation. In a final merits determination, we analyze a petitioner's accomplishments and weigh the totality of the evidence to determine if his successes are sufficient to demonstrate that he has 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.[2] In this matter, we determine that the Petitioner has not shown his eligibility.

The Petitioner listed his accomplishments in computer science, including the following examples:

> I created [redacted] the world's first tool for [redacted] mobile data analytics.
>
> I proposed and developed a new platform that enables [redacted] of mobile big data among smartphones.
>
> I proposed and developed the first paradigm in the mobile network that parallelizes the [redacted] data access.

Because the Director did not dispute the major significance of the Petitioner's contributions, we need not discuss those contributions in technical detail. At issue here is not the nature or usefulness of the Petitioner's contributions, but rather the extent of the acclaim he has earned in his field.

The Petitioner's mentor at [redacted] stated that the Petitioner "is arguably among the top-two fresh PhD graduates in the networking and mobile systems field this year, and one of the top five during the past five years." Eligibility requires the Petitioner to be at the top of his field, rather than the subset of "fresh PhD graduates." More relevant is the professor's contention that the Petitioner "is among the top 1% computer scientist[s] worldwide." This is either a subjective assessment or an objectively verifiable statement. If it is the latter, then it should derive from some empirical basis that exists independently of letters that the Petitioner submitted in support of his petition.

Various colleagues indicated that the Petitioner's activities reflect his recognition in the field. For instance, a professor at [redacted] State University stated:

> [The Petitioner] has won [redacted] Best Community Paper Award in 2016 and 2017. His dissertation has won the [redacted] Dissertation Year Fellowship in 2016. This evidence strongly suggests that [the Petitioner's] current work has been highly recognized by his peers in the scientific community.

[2] *See also* USCIS Policy Memorandum PM 602-0005.1, *Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator's Field Manual (AFM) Chapter 22.2, AFM Update AD11-14* 4 (Dec. 22, 2010), https://www.uscis.gov/policymanual/HTML/PolicyManual.html (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 recognition of his outstanding research contributions, [the Petitioner] has been invited to present his research work at . . . significant and highly regarded conferences in this field.

The recognition described above does not indicate national or international acclaim. The [redacted] Fellowship is a form of merit-based financial aid for students who, by definition, are still learning their trade. The record does not show that conference presentation is a privilege reserved for those at the top of the field. Awards at major conferences carry more weight, but they still represent the response of a limited audience to one particular paper. A consistent pattern of such awards from different conferences would provide greater support for a finding that the Petitioner has earned sustained acclaim (rather than certain contributions receiving attention in the short term).

A research manager at [redacted] signed a letter indicating that the Petitioner "started to commercialize his inventions via [redacted] in 2017. . . . In December of 2017, we have started a dialogue with his team to discuss the [redacted]'s features that are of interest and very complimentary to the analytics and performance monitoring systems." This collaboration was at an embryonic stage when the Petitioner filed the petition in January 2018, and the individual discussed the project in terms of its "potential" and its "anticipated" results.

The same letter included this passage:

> I have a keen interest in the upcoming product by [the Petitioner's] startup, because of its anticipated unique ability to perform the [redacted] analytics inside the smartphones and mobile devices. . . .
>
> I firmly believe that [the Petitioner] is an extraordinary technological inventor with an industry-oriented mindset. I can, without hesitation, state that he is one of the very few top research scientists in the cellular analytics field who has deep insight on the trends of the technology, need for advancement and also the commercial utilization of it.

A letter signed by a principal researcher at [redacted] contains similar, at times identical, language:

> My team is very interested in the [redacted] product because of its unique ability to perform the [redacted] analytics for the operational mobile networks inside the smartphones. . . .
>
> . . . .
>
> I firmly believe that [the Petitioner] is an extraordinary technological inventor with an industry-oriented mindset. Based on his research track record at [redacted] he is one of the very few top research scientists in the cellular analytics field who has deep insight on the technology trend, market needs and commercial utilization.

An assistant professor at [redacted] University signed a letter stating that the Petitioner "is one of the very few top research scientists in the field who has deep insight on the trend of the technology trend and

need for advancement and also the commercial utilization of it," while the chief executive officer of [redacted] signed a letter calling the Petitioner "one of the top research scientists in the field who has deep insight on the trend of the technology, need for advancement and also the commercial utilization of it." These similarities strongly indicate common authorship of the letters or key portions thereof.

Likewise, two different letters contain the same passage with the same grammatical error: "As an inventor myself, I understand this means [the Petitioner's] contribution is going into many research labs and industry, and it gains him acclaims [*sic*] by researchers worldwide." A third letter contains a shortened variant: "As an inventor myself, I understand this means [the Petitioner's] contributions have received acclaims [*sic*] by researchers worldwide." (In another apparent indicator of outside authorship, an official at [redacted] signed a letter stating that the Petitioner's "contributions . . . could not have been made by an average Ph.D. level *chemist*." The Petitioner is not a chemist.)

The systemic use of identical or strongly similar language suggests the language in the letters is not the authors' own. *Cf. Surinder Singh v. Board of Immigration Appeals*, 438 F.3d 145, 148 (2d Cir. 2006) (upholding an immigration judge's adverse credibility determination in asylum proceedings based in part on the similarity of some of the affidavits); *Mei Chai Ye v. U.S. Dept. 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).

Even if the letters had been of independent origin, we must also consider the extent to which the record objectively supports the claims in the letters. The Petitioner indicated that his "original award-winning research contribution, [redacted] has been used by 247 universities . . . , big companies . . . , and startups." [redacted]'s use by other institutions may speak to its significance, but the Petitioner has not provided sufficient context to show that this breadth of application is unusual in the field. Also, the significance of a contribution is not synonymous with acclaim for the people behind that contribution. Otherwise, the regulations would not require evidence of acclaim beyond those contributions. We must examine all the evidence, to determine whether it converges toward an overall finding of acclaim.

The Petitioner stated that his "pioneering research publications . . . have been cited over 220 times by researchers from 27 countries." By way of comparison, the Petitioner's mentor at [redacted] stated: "My work has been cited more than 23,000 times according to Google Scholar."

The Petitioner submitted statistical analyses from Dimensions, indicating that five of his articles are "extremely highly cited," earning between 7.27 and "19 times more citations than average." These figures can be misleading, because the range of citations is broad; the most-cited articles can receive hundreds or thousands of citations, while others are cited once or not at all. Above average is not necessarily synonymous with the top of the field. A submitted printout from Altmetric indicated that the Petitioner's most-cited article has a "Good Attention Score compared to outputs of the same age (76th percentile)." The Petitioner did not show that "Good" is the highest ranking of attention score, and he did not submit attention score information for any of his other articles. From the information submitted, one article with a citation record near the bottom of the top quartile is not indicative of sustained acclaim, or standing as one in the small percentage at the very top of the field.

The Petitioner also documented the number of downloads for some of his articles. The Petitioner stated that one of his articles "received 1,618 downloads, which is . . . objective evidence to prove that [he] as sustained national or international acclaim." The download count only shows how many people have had the opportunity to read the article; it does not tell us the article's subsequent effect on those who downloaded it. The same document that showed the download count of 1618 also showed "Citation Count: 4." If downloads rarely result in citations, then the download count does not appear to correlate directly to the article's influence.

The Petitioner compared his recent productivity and citation rates to those of "highly reputable leading scientists," whom the Petitioner also referred to as "highly esteemed scientists." Biographical information relating to these individuals indicates that their overall accomplishments and reputations substantially exceed those of the Petitioner. The Petitioner does not place himself among their ranks simply by showing that his output was, by some measures, comparable to theirs from 2016 to 2018.

The Director stated that the Petitioner had published scholarly articles "in prestigious journals," and that "some of [his] papers are frequently cited," but concluded that the Petitioner had not provided a sufficient basis for comparison to show that he is at the top of his field.

The Petitioner stated: "Due to my outstanding contributions . . . , I have been invited and have served as an expert reviewer for the . . . world's top conferences and journals." The Petitioner documented his peer review work, which the Director recognized under 8 C.F.R. § 204.5(h)(3)(iv), but he did not submit evidence from the conference organizers and journal publishers to establish how they select peer reviewers. Several conference-related peer review invitations came from the same source, who is one of the Petitioner's frequent collaborators. Therefore, the Petitioner has not supported his assertion that the peer review invitations were "[d]ue to [his] outstanding contributions" rather than more mundane factors such as, for example, his involvement in the field or submitting his name to volunteer as a peer reviewer.

Several review invitations in the record included this request: "If you are unable to complete the review at this time, we would be grateful if you could recommend a qualified student, postdoc, or colleague to review this paper." This demonstrates that a student in the Petitioner's field can qualify as a peer reviewer even while their training is incomplete. One peer review invitation from September 2018 appeared to indicate that the Petitioner was chosen as a reviewer because the paper under consideration included a citation to the Petitioner's work. Some review invitations referred to the Petitioner's expertise in his field, but expertise is not the same as national or international acclaim. The Petitioner did not show that his participation in peer review demonstrated acclaim.

The Petitioner notes on appeal that he "is a winner and recipient of the National Science Foundation's (NSF) Small Business Innovation Research (SBIR) Award based on his excellent research results and future development proposal submitted in 2018." What the Petitioner describes as an award is a grant to fund continued research and development. At the time of filing, the Petitioner indicated that he was "currently applying" for the grant; the approval occurred in January 2019, a year after the filing date. Documentation about applying for the grant does not show that eligibility rests on "excellent research results." Rather, NSF's website, quoted in the record, indicated that "[t]he NSF SBIR program seeks innovative proposals that show promise of commercial and societal impact." A purpose of "Phase I

proposals," like the one involving the Petitioner, is to "establish[] technical feasibility or proof of concept of unproven, risky technologies."

The Petitioner has shown that he is a capable and productive researcher, whose work has been of value in his field. Nevertheless, the materials cited as evidence of his claimed stature at the top of his field rely on limited comparisons (such as comparing the citation rate of an article to the citations of other articles in the same issue of the same journal). This method highlights the Petitioner's most successful publications, without showing a consistent pattern of such success. Focusing only on the Petitioner's most highly-cited articles conflates isolated "contributions of major significance" with an overall pattern of "*sustained* acclaim."

In terms of the Petitioner's demonstrable impact, commercialization of his work was still at a very early stage at the time of filing, and the record provides little information about [redacted] other than to establish that it exists (or existed as of 2018).

The objective evidence in the record indicates that some of the Petitioner's most recent efforts have attracted attention in the field, and authorities such as the Small Business Administration view his work as promising. The record is less persuasive with respect to the realization of that promise, and solicited descriptions of the Petitioner's claimed standing in the field show unmistakable evidence of shared authorship, which undermines the claimed independence of those descriptions and thus their value as evidence of sustained acclaim.

The record, as a whole, does not establish the Petitioner's eligibility for the benefit sought. The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than those progressing toward the top. USCIS has long held that even athletes performing at the major league level do not automatically meet the statutory standards for classification as an individual of "extraordinary ability." *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994). While the record shows that the Petitioner's accomplishments have been well received, the totality of the evidence does not indicate he has sustained national or international acclaim and he is among the small percentage at the top of his field. *See* section 203(b)(1)(A)(i) of the Act and 8 C.F.R. § 204.5(h)(2).

III. CONCLUSION

The appeal will be dismissed for the above stated reasons. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. The Petitioner has not met that burden.

ORDER: The appeal is dismissed.