U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 6864538

Date: APR. 23, 2020

Appeal of Nebraska Service Center Decision

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

The Petitioner, a research scientist, 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 the Petitioner did not establish, as required, that he meets at least three of the ten initial evidentiary criteria for this classification. The matter is now before us on appeal.

The petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). The Administrative Appeals Office (AAO) reviews the questions in this matter de novo. *See Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we agree with the Director's determination that the Petitioner did not meet at least three of the initial evidentiary criteria and, accordingly, we will dismiss the appeal.

I. LAW

Section 203(b)(1) of the Act makes visas available to 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 a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the 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 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).

II. ANALYSIS

The Petitioner is a research scientist in the field of machine learning and artificial intelligence. He received his bachelor of engineering and master of engineering degrees in computer science and technology from [redacted] University in 2006 and 2008, respectively. The Petitioner completed his doctoral studies in electrical and computer engineering at University of [redacted] in 2016. As of the date of filing, he had previous work experience as a research scientist for [redacted], as a research intern for [redacted], and as a graduate research assistant at [redacted].[1]

A. Evidentiary Criteria

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). The Petitioner claims to meet three of the ten evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), summarized below:[2]

- (iv), Participation as a judge of the work of others;
- (v), Original contributions of major significance; and
- (vi), Authorship of scholarly articles.

The Director found that the Petitioner met two evidentiary criteria, related to judging and authorship of scholarly articles. The record reflects that the Petitioner has participated as a judge of the work of others in his field by peer reviewing manuscripts for conferences and professional journals in his field, consistent with 8 C.F.R. § 204.5(h)(3)(iv). He has also written scholarly articles in the field, including several journal articles and more than 20 papers published in conference proceedings, under 8 C.F.R. § 204.5(h)(3)(vi).

[1] The record reflects that the Petitioner accepted a position as a senior research scientist with [redacted] in August 2018, subsequent to the filing of the petition.

[2] The Director determined that the Petitioner initially claimed to meet the criterion at 8 C.F.R. § 204.5(h)(3)(ii), relating to membership in associations in the field which require outstanding achievement of their members, but did not submit sufficient evidence to satisfy the criterion. The Petitioner does not contest this determination on appeal and therefore we deem this issue to be waived. *See, e.g., Matter of M-A-S-*, 24 I&N Dec. 762, 767 n.2 (BIA 2009).

However, the Director determined that the Petitioner did not submit sufficient evidence to establish that he had made original contributions of major significance in his field. After reviewing all the evidence in the record, we conclude that the Petitioner did not meet this third criterion.

> *Evidence of the individual'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)

In order to satisfy the regulation at 8 C.F.R. § 204.5(h)(3)(v), a petitioner must establish that not only has he made original contributions, but that they have been of major significance in the field.[3] 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.

On appeal, the Petitioner asserts that he has made three significant contributions to the field of machine learning, deep learning, and artificial intelligence.[4] Specifically, he asserts that he meets this criterion because he has authored scholarly articles that other scientists have relied on or cited to, he has presented his findings in international conferences, and he has submitted letters from other scientists in his field who discuss and praise his research contributions.

As a preliminary matter, we note that two of the three original contributions identified by the Petitioner on appeal are based on research that he published or presented subsequent to the filing of this petition in March 2018. Specifically, he claims eligibility under this criterion based on his: (1) development of methods for compression of [redacted]; and (2) development of a novel regularization method for [redacted].

Letters from [redacted], and [redacted] note that the Petitioner's article discussing his development of [redacted] was published by the [redacted] 2018, and they do not claim to have been familiar with this research prior to that time.[5] The Petitioner's curriculum vitae listed his co-authored paper "[redacted]" as a publication that was "Under Preparation or Under Review" and "submitted to [redacted] 2018." The Petitioner's Google Scholar citation index provided at the time of filing, which included publications from 2018 and therefore appeared to be recently printed, did not include any publications with titles mentioning [redacted]. Finally, we note that none of the five expert opinion letters provided with the Petitioner's initial submission mentioned his research in this area.

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[3] *See* 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* 8-9 (Dec. 22, 2010), http://www.uscis.gov/legal-resources/policy-memoranda (stating that although funded and published work may be "original," this fact alone is not sufficient to establish that the work is of major significance).

[4] At the time of filing, the Petitioner provided letters from [redacted], who discuss his research and contributions in additional areas within his field. The Petitioner does not reference these research contributions or these letters on appeal or indicate that he meets the original contributions criterion based on this evidence. Therefore, although we have reviewed and considered these letters, we will not discuss them here.

[5] The 2018 [redacted] conference was held in [redacted] 2018. *See* https:/[redacted]Conferences/2018 (last visited on Apr. 14, 2020).

The evidence also reflects that the Petitioner developed the [redacted] regularization method after joining [redacted] in August 2018. [redacted] Director of [redacted] states that [redacted] regularization "is an important update of [redacted]'s artificial intelligence framework since the [redacted] World Congress in [redacted] 2018," and [redacted] of [redacted] University indicates that he and his colleagues have been discussing the [redacted] regularization method "since this method was released in [redacted] 2019."

The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1). A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi,* 22 I&N Dec. 169, 175 (Comm'r 1998). Therefore, the Petitioner cannot establish that he meets this criterion based on research that was published subsequent to the filing of the petition.

The last of the three original contributions highlighted by the Petitioner on appeal is his development of a [redacted] method, research that he originally published in 2016. He specifically references two previously submitted letters from [redacted] and [redacted], both professors with the National University of [redacted] [redacted] emphasizes the importance of [redacted] in artificial intelligence, and states that he considers the Petitioner's [redacted] to be "extraordinarily important" and a "major breakthrough" in the [redacted] field. He notes that it has "intrigued a lot of researchers and engineers in the field" and that it is "open sourced on GitHub" where it "greatly facilitates the research progress of other [redacted] methods." [redacted] further states that he is aware of others who have employed the [redacted] method for their projects, and that he believes it "will generate greater impact in the future." [redacted] who co-authored the Petitioner's paper, describes the [redacted] method as "a significant contribution to the machine learning literature," noting that it "significantly improves the potential of [redacted] methods," and has "gained considerable impact on the machine learning community." He states that his students have used the [redacted] method since 2016 and have been developing new [redacted] methods inspired by the method.

In addition to these letters, the Petitioner submitted a letter from [redacted], a scientist at the Institute of [redacted], who describes the Petitioner's [redacted] method as "revolutionary," noting that it "is the first work in the [redacted] literature that demonstrates the merit [of] [redacted] in terms of [redacted] discovery." He states that [redacted] has been highly regarded as an important work in the [redacted] literature" and indicates his belief that it "will attract more attention and create more impact in the machine-learning community in the near future." [redacted] of [redacted], who also co-authored the Petitioner's paper," notes in his letter that [redacted] "has been widely regarded as an important [redacted] method by the global research communities" stating that methods capable of learning [redacted] structures in [redacted]" have "tremendous value in both theory and applications in various areas." [redacted] notes that the [redacted] method "improves the usability of [redacted]" He states that "a lot of research works in [redacted]" including his own publications, "are either based on the idea of [the Petitioner's] [redacted] or directly adopted the methods."

Although these letters explain the Petitioner's research and note its novelty and value, they do not explain with specificity why the [redacted] has been considered of such importance, and, more importantly, how its current impact on the field rises to the level major significance required by this criterion. While the letters indicate that the [redacted] method has been cited and used by others in the

field, they also emphasize its potential *future* impact, making it unclear to what extent it has already influenced or impacted the field. The letters generally indicate that the research is considered important, added value to the pool of knowledge in his field and opened avenues for further researching into [redacted] methods. The evidence, however, is insufficient to confirm that the level of attention the Petitioner has received reflects widespread commentary and acceptance of his work, or that the field of machine learning or its subfields have regarded his research as authoritative or otherwise deem it to be of major significance. Here, the Petitioner's letters do not contain specific, detailed information explaining the unusual influence or high impact his research or work has already had on the overall field. Letters that specifically articulate how a petitioner's contributions are of major significance to the field and its impact on subsequent work add value.[6] On the other hand, letters that lack specifics do not add value, and are not considered to be probative evidence that may form the basis for meeting this criterion.[7]

In addition to the expert opinion letters, the Petitioner also provides his publication and citation record from *Google Scholar*, which includes his journal articles and conference presentations.[8] We note that several of the submitted letters highlight that the Petitioner presented his paper describing the above-referenced [redacted] method, titled '[redacted]' at the [redacted] in 2016, and emphasize that [redacted] is a "premier international conference" in this subfield. The record also indicates that the Petitioner's paper was selected as one of eleven "Best Paper" finalists at this conference, but it does not demonstrate how the Petitioner's invitation to the [redacted] or the finalist recognition he received for his paper are indicators that the research has been recognized as an original contribution of major significance in his field.

As noted, publications and presentations typically present "original" work but are not sufficient under 8 C.F.R. § 204.5(h)(3)(v) absent evidence that they were of "major significance." Generally, citations serve as an indication that the field has taken an interest in a Petitioner's work. We acknowledge, however, that a petitioner may present evidence that his articles "have provoked widespread commentary or received notice from others working in the field, or entries (particularly a goodly number) in a citation index which cite [his] work as authoritative in the field, may be probative of the significance of [his] contributions to the field of endeavor."[9]

According to *Google Scholar*, the Petitioner's co-authored conference paper on the [redacted] method had been cited 12 times at the time of filing, while his most cited article had 40 citations. Although he provided information regarding the number of times each of his articles has been cited, he did not provide additional supporting evidence to establish the significance of these numbers or to demonstrate that any of his publications are highly cited or widely discussed when compared to articles published by others. For example, an appropriate analysis, would be to compare the Petitioner's citations to those of other similarly, highly cited articles that the field views as having been of major significance, as well as factoring in other corroborating evidence. Absent such evidence, the Petitioner's citations reflect that his research has received some attention from the field, but he did not demonstrate that the citation

[6] *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8-9.
[7] *Id.* at 9.
[8] The Petitioner submits an updated *Google Scholar* citation history on appeal indicating that the cumulative number of citations mentioned in the Director's decision was incorrect. The record reflects that the Director accurately stated the number of cumulative citations documented in the Petitioner's *Google Scholar* citation history submitted at the time of filing.
[9] *Id.* at 8-9.

numbers for his individual articles represent majorly significant contributions to the overall field. For example, we cannot determine whether a record of 12 citations supports the testimonial evidence indicating that the Petitioner's novel method was received by the field as "revolutionary" or as a "major breakthrough."

Regardless, even highly cited publications alone are not sufficient under 8 C.F.R. § 204.5(h)(3)(v) absent evidence that they were of "major significance" as a citation number or ranking does not provide sufficient context to determine the impact or importance of a given researcher's work in the field. That context must be provided by other evidence in the record. Here, while the Petitioner submitted corroborating evidence in the form of expert opinion letters, that evidence, for the reasons already discussed, is not sufficient to establish that any of the Petitioner's past research findings, as of the date of filing, have remarkably impacted or influenced his field.

Considered together, the evidence consisting of the Petitioner's journal publications and conference papers, his citation history, and the reference letters from his colleagues and other experts, establishes that the Petitioner has been very productive, and that his published data and findings have been relied upon by others in their own research. It does not demonstrate, however, that the Petitioner has made an original contribution of major significance in his field. Therefore, he has not met 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 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 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 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 significance of his 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) of the Act. Moreover, the record does not otherwise demonstrate that the Petitioner has garnered national or international acclaim in the field, and he is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2).

For the reasons discussed above, the Petitioner has not demonstrated his 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.