U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 8999311

Date: JULY 29, 2020

Appeal of Nebraska Service Center Decision

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

The Petitioner, a wireless communications engineer, 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 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 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 a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the recognition of their 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 they 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) (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 Petitioner earned his graduate degrees at the University [redacted] After holding engineering positions at [redacted] and [redacted] he started working in his current position as a senior staff engineer/researcher at [redacted], in February 2019, four months before filing the present petition. He holds O-1 nonimmigrant status.

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 have met six criteria, summarized below:

- (ii), Membership in associations that require outstanding achievements;
- (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 found that the Petitioner met the three evidentiary criteria numbered (iv), (vi), and (ix). The Director made contradictory findings regarding criterion (v), first stating that the Petitioner met its requirements, but then stating that the Petitioner had not established that his original contributions

were of major significance in the field. On appeal, the Petitioner asserts that he meets all six claimed evidentiary criteria.

After reviewing all of the evidence in the record, we agree with the Director that the Petitioner has met at least three criteria. Therefore, rather than discuss the specific requirements of the evidentiary criteria, we will evaluate the totality of the evidence in the context of the final merits determination below.

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 and 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 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 shown his eligibility.

The record establishes that the Petitioner is an experienced and accomplished engineer in his field, but these factors do not necessarily add up to sustained national or international acclaim; not everyone with a productive career is among the small percentage at the very top of their field.

The Petitioner has submitted emphatic and enthusiastic letters from various peers and colleagues, but, significantly, the objective documentation in the record is not on par with the assertions in those letters. For instance, the Petitioner is a Senior Member of the Institute of Electrical and Electronics Engineers (IEEE). The Petitioner claims that this membership satisfies 8 C.F.R. § 204.5(h)(3)(ii), which requires documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields. A chief scientist at [redacted], who is also a Fellow of the IEEE, states: "Senior membership is highly selective and awarded solely to those candidates who have been judged by their accomplished peers as having attainted [*sic*] outstanding achievements in their field."

The Petitioner submits a copy of the IEEE's Bylaws. Relevant excerpts of section I-104 draw crucial distinctions between "Senior Member" and "Fellow" status:

> 2. Fellow. The grade of Fellow recognizes unusual distinction in the profession and shall be conferred by the Board of Directors upon a person with an outstanding record of accomplishments in any of the IEEE fields of interest . . . . The accomplishments

[1] *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/legal-resources/policy-memoranda (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).

> that are being honored shall have contributed importantly to the advancement or application of engineering, science and technology, bringing the realization of significant value to society. . . .
>
> 3. Senior Member. The grade of Senior Member is the highest for which application may be made and shall require experience reflecting professional maturity. For admission or transfer to the grade of Senior Member, a candidate shall be an engineer, scientist, educator, technical executive, or originator in IEEE-designated fields. . . . The candidate shall have been in professional practice for at least ten years and shall have shown significant performance over a period of at least five of those years.

The Bylaws specify that "significant performance" can take the form of "[p]ublication of papers, books, or inventions." The requirements to become a Fellow appear to be align much more closely with the regulatory language than the requirements for the Senior Member grade. It is also significant that one can apply for the Senior Member grade, whereas elevation to Fellow requires nomination and election at the highest levels of the organization.

Because the aforementioned writer is, himself, an IEEE Fellow, who quotes from IEEE governance documents in his letter, he is demonstrably aware of the above distinctions between membership grades. Rather than acknowledge those distinctions, he selectively quotes from the bylaws, stating: "The grade of Senior Member is the highest for which application may be made," but omitting vital context from the same document. This omission of critical details is a factor to consider when judging the overall credibility of the assertions in his letter. We may give less weight to a letter of opinion that is in any way questionable. *Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r 1988).

In the above case, objective documentation in the record directly establishes a degree of exaggeration in the quoted letter. Many other claims in the submitted letters are not so immediately amenable to comparison with documentation in the record, but this lack of documentary evidence should not be construed to give the other letters a presumption of credibility, when those letters contain similarly hyperbolic statements to the example discussed above. Subjective evaluations of the Petitioner's work as "remarkable" and "excellent," and referring to the Petitioner as "one of the foremost researchers in the wireless telecommunications field," have some weight, but must be viewed in the context of the record as a whole, including independent documentary evidence.

This need to balance solicited letters against documentary evidence is evident, for example, when considering the Petitioner's involvement in peer review. The Director determined that peer review of manuscripts for journals and conference presentations is a routine function in academia, rather than a privilege reserved for those at the top of the field. Letters in the record indicate that peer review "is a valued service" performed by "distinguished experts," but rather than submit documentation from the entities that publish the journals and organized the conference in question, showing how those entities select peer reviewers, the Petitioner provides background information about the reputations of those organizations. Such information does not address the question at hand.

The Petitioner has worked with technology involving the [redacted]), the manner in which many everyday devices connect to the Internet (for instance, a home security system

that can be remotely activated and monitored with a smartphone). Much of this work has been in the context of the [redacted], which is involved in developing international telecommunications standards. The work of this project, taken as a whole, impacts the telecommunications industry and, as a result, affects millions of people worldwide who rely on telecommunications in various ways. It does not follow, however, that only the top engineers were invited to participate, or that participation directly resulted in sustained national or international acclaim. Colleagues within the project call the Petitioner "a leading figure in [redacted]" who "has made key contributions that have substantially impacted today's telecommunications technologies."

The nature of the Petitioner's involvement is described in narrow, technical terms, referring for instance to his service "as rapporteur of the [redacted] study item, [redacted]' and "a rapporteur of the normative specification stage in [redacted] as [redacted]." The record does not provide sufficient information about how these roles fit within the larger [redacted] framework. For example, the record does not say how many working groups there are within [redacted], or how many study items each working group handles. Without this information, we cannot conclude that the Petitioner's asserted leadership role within specific, granular aspects of [redacted] translate into significant impact or influence over the standards project as a whole.

We agree with the director of [redacted], at [redacted] that "[t]he number of services and applications served by [redacted] technologies and the impact is massive," but the record does not adequately show that this "technology is widely deployed" "[b]ecause of [the Petitioner's] work" or that the Petitioner "has been instrumental in bringing this technology into international standardization."

The record does not include key information about [redacted], such as the overall size and organization of the project. Without this information, the record does not warrant a finding that the importance of the Petitioner's work is commensurate with the overall importance of [redacted] as an international endeavor.

Other assertions in the letters are broad and vague. A master researcher at [redacted] states that the Petitioner "made highly advanced and original contributions toward the development of important features," and that the Petitioner's "initiatives in [redacted] technology have been nothing less than remarkable," but does not elaborate with regard to the nature of these contributions and initiatives. A common feature in many of the letters is the use of highly technical language without sufficient explanation as to how the Petitioner's contributions are significant. Furthermore, while it is helpful to explain a given contribution's useful practical applications, those applications themselves do not necessarily establish the major significance of that contribution.

The Petitioner's work has resulted in a number of patents, but the approval of a patent application attests only to originality rather than significance. Evidence of their existence is not evidence of their impact. Similarly, published articles and conference presentations have the potential to influence the field, but the burden is on the Petitioner to show the actual extent of the impact of his work.

The Petitioner claims "an impressive record of citations" of his published work. The [redacted] chief scientist quoted earlier states that, because the Petitioner is "an industrial researcher where publications are not emphasize [*sic*], like in academia," the Petitioner's citation rate "is very good indeed." The Petitioner provides no documentary evidence to support this claim about citation rates for engineers in

industry rather than academia. The record does show that the Petitioner's most-cited articles[2] date from when he was a graduate student (and thus publishing in an academic rather than industrial context), but the Petitioner does not provide context to show that these articles were cited more than others of their kind. The assertions of counsel do not constitute evidence in this regard. *See Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988) (citing *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980)).

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. U.S. Citizenship and Immigration Services 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 met the requirements of several individual evidentiary criteria, but when viewed under the lens of a final merits determination, these separate pieces do not assemble into a complete picture that persuasively shows the Petitioner to be a nationally or internationally acclaimed figure at the very top of his field. Success and productivity are not the same as acclaim, and the Petitioner has not established the significance of his role in projects of indeterminate size and scope.

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.

ORDER: The appeal is dismissed.

[2] At the time of filing, the Petitioner's two most-cited articles had earned, respectively, 38 citations over 14 years and 28 citations over 11 years.