U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 12305024

Date: NOV. 24, 2020

Appeal of Nebraska Service Center Decision

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

The Petitioner, a researcher specializing in computational imaging, 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 the record did not establish that the Petitioner had satisfied at least three of ten initial evidentiary criteria, as required. 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,
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> (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
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> (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

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 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).

II. ANALYSIS

The Petitioner earned a doctorate in electrical engineering from the University of [redacted], conducting research involving imaging of [redacted] objects. Since receiving his degree in 2016, the Petitioner has worked as a hardware development engineer at [redacted] developing imaging technology used in [redacted] cameras.[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 initially claimed to have met six 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 alien in professional or major media;
- (iv), Participation as a judge of the work of others;
- (v), Original contributions of major significance; and
- (vi), Authorship of scholarly articles.

The Director concluded that the Petitioner met two of the evidentiary criteria, numbered (iv) and (vi). On appeal, the Petitioner asserts that he also meets the criterion numbered (v). The Petitioner does

[1] In January 2019, [redacted] filed an immigrant petition seeking to classify the present Petitioner as an outstanding researcher under section 203(b)(1)(B) of the Act. That petition was approved, and subsequent filings indicate that the Petitioner remains at [redacted]. The Petitioner has since filed a third (still pending) immigrant petition, even though he remains the beneficiary of an approved first-preference immigrant petition.

not contest the Director's conclusions regarding the other previously claimed criteria, and therefore we consider those issues to be abandoned.[2]

After reviewing all of the evidence in the record, we agree with the Director that the Petitioner has met criteria (iv) and (vi), and we conclude that he also meets criterion (v), as explained below. Because 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.

> *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 claims four research contributions, described in these words:

- Source shifting pixel [redacted] with incorporation of pixel function for lens-free [redacted] imaging;
- Lens-free Imaging using [redacted] approach;
- Propagation Phasor Approach, a unified mathematical framework for lens-free and lens-based [redacted] imaging theory; and
- Pioneering work in developing compact, [redacted] imaging systems for [redacted] imaging.

The Petitioner's research at [redacted] led to several patents and journal articles. The Petitioner has established heavy citation of some of his articles.[3] Also, he has worked on projects that attracted the attention of some significant media outlets that cover science and technology. We agree with the Petitioner that the Director did not give sufficient weight to this evidence. Because this evidence is sufficient to meet the criterion, we need not discuss, here, additional claims regarding the significance of the Petitioner's later work at [redacted]

The Petitioner has, thus, satisfied three of the evidentiary criteria. The Petitioner has thereby cleared one evidentiary threshold, but this, by itself, does not presumptively establish eligibility. Next, 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, his 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

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[2] *See Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012) (stating that when a filing party fails to appeal an issue addressed in an adverse decision, that issue is waived). *See also Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005), citing *United States v. Cunningham*, 161 F.3d 1343, 1344 (11th Cir. 1998); *Hristov v. Roark*, No. 09–CV–27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (plaintiff's claims were abandoned as he failed to raise them on appeal to the AAO).

[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 (Dec. 22, 2010), https://www.uscis.gov/ legal-resources/policy-memoranda (stating that "a goodly number" of citations "may be probative of the significance of the alien's contributions to the field of endeavor").

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.[4] In this matter, we determine that the Petitioner has not shown his eligibility.

The record, as a whole, does not establish that the Petitioner, as an individual, has earned sustained national or international acclaim in his field. Rather, the Petitioner studied for his doctorate at a laboratory that was already very highly regarded, led by a professor whose own reputation appears to surpass the Petitioner's own by a very substantial margin. The attention that the Petitioner's projects have earned is predominantly collective, rather than conveying acclaim specifically on the Petitioner. In response to a request for evidence, the Petitioner stated that his work was "one of the critical contributions that won [a] research award" from the [redacted] but the award was described as a "Standard Grant," awarded to the [redacted] lab in 2010, before the Petitioner arrived there. The document cites the Petitioner's work not as a *basis* for the grant, but rather as part of a list of 73 "publications produced *as a result* of [the funded] research." The Petitioner is a credited co-author of 10 of these 73 articles, rather than a consistently central member of the research team.

The Petitioner's résumé, submitted with the petition, lists three journal articles published after the Petitioner left [redacted] in 2016; and in all three of those articles, his co-authors include other members of the [redacted] research group. This indicates that his most recent author credits incorporate work from his graduate study rather than the products of significant ongoing participation in research for publication.

Furthermore, while the Petitioner has established the significance of work he undertook during his graduate studies at [redacted], the record does not show that the Petitioner's subsequent work at [redacted] has attracted comparable attention. The [redacted] laboratory may have earned a *collective* reputation for important contributions, but this reputation does not necessarily follow individual alumni after they complete their graduate or postgraduate training there. As such, the record does not show that the Petitioner has achieved *sustained* acclaim in his field as the statute requires.

Regarding his more recent employment, the Petitioner asserts that [redacted] has incorporated his work into "[e]very generation and model of [redacted] since 2016." The Petitioner adds: "The revenue generated from the sales of the [redacted] that implemented [the Petitioner's] original contributions reached approximately $535,544 Million . . . from Quarter 3, 2016 to Quarter 1, 2020." These figures indicate that the Petitioner's work is widely available, owing to its incorporation into very popular consumer products, but this does not imply that the Petitioner is personally responsible for a significant share of [redacted] sales revenue, or that he is an acclaimed figure in his field by virtue of his work with [redacted]

Apart from the attention given to certain high-profile projects at [redacted] the record does not show a consistent picture of sustained acclaim or place the Petitioner at the very top of his field. His judging activity has consisted of what appears to be routine peer review. He initially claimed awards and

[4] *See also* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 4 (stating that adjudicating 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).

memberships to satisfy other evidentiary criteria, but the awards consist of an internal certificate from his then-employer and a financial aid scholarship. The Petitioner did not show that his memberships are restrictive rather than widely available to those in his field; the associations documented in the record claim between 55,000 and 442,000 members, not compatible with exclusive or restrictive membership requirements, and even then he is an "Early Career Professional Member" of one such society. The Petitioner's involvement in heavily-cited research projects during his doctoral studies does not outweigh this evidence.

Researchers at various institutions provided letters in support of the petition. Most of these letters are from individuals who state they have not worked with the Petitioner. Such letters are useful when explaining the nature of the Petitioner's contributions, but do not necessarily represent the overall consensus within the field as to the significance of those contributions. Furthermore, the record does not establish the circumstances under which the Petitioner obtained the letters, and therefore the existence of those letters does not strongly support the conclusion that the Petitioner is widely known in his field.

The various letters contain many assertions about *potential* applications and benefits of the Petitioner's work, stating for instance that it "*could* . . . serve as an important building block of efficient telemedicine" and "*could* directly benefit the already existing conventional [redacted] by boosting their [redacted] product." Another letter indicates that the Petitioner's "invention has provided a sensitive, field-portable, and cost-effective method that enables the practice of imaging-based [redacted] and [redacted] testing even in field settings," but the record does not show the extent, if any, to which the field has actually implemented the Petitioner's work in this way. Speculation about benefits that may eventually arise from the Petitioner's work does not carry the same weight as objective evidence of existing impact and influence.

For the above reasons, the Petitioner has not established eligibility.

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. 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 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). Rather, the record suggests transitory, collective recognition resulting from the Petitioner's graduate studies at [redacted].

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.