In Re: 10768211   Date: OCT. 5, 2020

Appeal of Nebraska Service Center Decision

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

The Petitioner, a provider of financial and business data and news, seeks to classify the Beneficiary as an alien of extraordinary ability in the field of artificial intelligence (AI). *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 while the Beneficiary met the initial evidence requirements of the requested classification, the record did not establish that he has sustained national or international acclaim and is among the small percentage at the top of his field. On appeal, the Petitioner asserts that the Director imposed novel requirements in rendering his decision, and that the Beneficiary qualifies as an alien of extraordinary ability.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* 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) 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 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). 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).

II. ANALYSIS

The Beneficiary is currently employed by the Petitioner as a senior research scientist in its Artificial Intelligence Group, where he conducts research on natural language processing (NLP) and machine learning (ML). He earned a Ph.D. in computer science from [_____] University in 2017, and states that he intends to continue working in this area in the United States.

A. Evidentiary Criteria

Because the Petitioner has not indicated or established that the Beneficiary 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 Director found that the Beneficiary met three of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), relating to his participation as a judge of the work of others, his authorship of scholarly articles, and his receipt of a salary that is high in comparison to others in his field. On appeal, the Petitioner asserts that the Beneficiary also meets two additional evidentiary criteria.[1] After reviewing all of the evidence in the record, we agree that the Beneficiary meets the three criteria referred to above. As the Beneficiary has therefore met the initial evidence requirement, we will not consider whether he also meets the additional claimed criteria, but will instead consider all of the evidence in the record in performing a final merits determination.

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[1] The Petitioner also claims to have submitted comparable evidence under 8 C.F.R. § 204.5(h)(4), but does not explain why the criteria listed under 8 C.F.R. § 204.5(h)(3) are not readily applicable to the Beneficiary's occupation. Further, as we agree with the Director's finding that the Beneficiary meets the initial evidentiary requirements for the requested classification, the Petitioner's claim of comparable evidence is moot and thus will not be considered.

B. Final Merits Determination

The record indicates that the Beneficiary's work in AI has been concentrated in the sub-fields of NLP and ML, and that he continues to focus his work in these areas with the Petitioner. On appeal, the Petitioner asserts that the Beneficiary has made three main contributions to these areas during the course of his studies and in its employ. The first involves his participation in the development of an NLP [   ], which took place during his employment as a research intern. In a reference letter submitted with the initial filing, [   ] Chief Scientist at [   ] describes his collaboration with the Beneficiary to develop "[   ] learning architectures that could be applied to a wide range of complex NLP problems…" and notes that this research resulted in a [   ] [   ] that could be used for various different tasks in natural language processing…"[   ] adds that this research was presented at two conferences, the 2015 [   ] [   ] [   ] and the 2016 [   ] [   ]. However, [   ] does not provide specific examples of the application of this [   ] by others to solve NLP problems or perform tasks.

The Petitioner asserts on appeal that the paper presented at [   ] in 2016, [   ] [   ]" "remains among the publication's top 30 most cited articles." Although the evidence referenced by the Petitioner indicates that this paper was cited on 597 occasions[2] by other researchers as of the date the petition was filed, and that it substantially exceeds [   ]'s "h5-median" score, it does not support the assertion that it is among [   ]'s top 30 most cited articles.[3] It is by far the most highly cited of the Beneficiary's published papers, and this figure by itself indicates that many researchers in the field of AI have used this paper in support of their own research in some way. But the record does not include evidence which demonstrates whether or how other researchers have applied or built upon the Beneficiary's work, or that the framework has been implemented by others in the field, and thus does not show the nature or degree of impact this work has had on the field of AI, or the level of recognition the Beneficiary has received because of it.

In addition, the Petitioner also refers to evidence of the importance of the [   ] conference in the field of AI. This includes a list from the Google Scholar website showing that it ranks second in the field of AI in terms of "h5-index" and "h5-median," terms which reflect that a certain number of articles published by that medium have been cited the same number of times in the past five years.[4] In addition, [   ] states in his letter that [   ] is "one of the primary conferences of high impact in Machine Learning and Artificial Intelligence research." However, the Petitioner does not explain how this ranking affects the impact or recognition of the Beneficiary's work beyond the factors discussed above. We will not assume that a paper published in a prestigious or highly-ranked journal or conference proceeding is inherently more impactful or gains greater recognition than a paper published in a different medium.

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[2] This paper had 909 citations as of September 1, 2020 per the Beneficiary's Google Scholar profile, https://[   ]

[3] We also note that since the h5-median reflects citations to papers published in the period from 2015-19, it is not an accurate gauge of the impact of the Beneficiary's work compared to more recently published articles which have had a shorter period in which to be cited, nor does it take into account citations to papers published in this journal before 2015.

[4] The Petitioner also refers to evidence that this conference (and others at which the Beneficiary presented his work) has a "CORE rank" of A*, but the record does not include evidence that explains either the meaning or significance of this rank.

The second contribution highlighted by the Petitioner is based upon the Beneficiary's work published at the [_____] conference in 2014, "[_____]" As with the paper discussed above, the Petitioner focuses on the number of citations to this paper, 193 as of the time of filing, and points out that this is above the conference proceeding's h5-index (but below the h5-median figure.) While we acknowledge that this citation figure indicates that many other researchers in the field of AI have relied on the Beneficiary's work in some way, we note that this evidence does not provide sufficient qualitative or quantitative context to establish that the he is one of the small percentage at the top of this field. Although the h5-index for [_____] indicates that the paper is one of the more highly-cited papers to be presented at the conference in the past five years, it does not provide information regarding papers published in the field overall at other conferences and in scientific journals, or papers which were previously published in the [_____] proceedings. In addition, it does not provide insight into how or to what extent the researchers who cited the Beneficiary's paper used this research in their own work.

Reference letters discussing this work provide some further insight into its impact on the field of AI. [_____] of [_____] University, who collaborated with the Beneficiary on this work, confirms that the Beneficiary conducted the bulk of the work towards this research under her guidance, and concludes that it "has had a far-reaching impact on the worldwide natural language community…" But she does not provide details as to the nature of this impact, or provide specific examples of how it has been recognized by others in the AI field.

Another letter was submitted by [_____] of [_____] University, who indicates that he does not know the Beneficiary but is familiar with his work. He describes the Beneficiary's research "on [_____] interpretation for [_____] in natural language processing" as "revolutionary," and states that he developed a new method which works in conjunction with previous work but "overcame some of their drawbacks." [_____] indicates that this work "provides insight about different [_____] components that helps the industry design better architectures for new tasks," and is relevant to a company such as the Petitioner, but he does not provide details about whether this model has been implemented in the industry or otherwise recognized.

The third contribution which the Petitioner notes on appeal relates to his work which was published at the [_____] conference in 2014, [_____] [_____] As with the previous examples, the Petitioner compares the number of citations to this paper with the publication's h5-index, noting that its 236 citations triples that figure, and includes evidence showing that the conference proceedings are ranked second among publications in the field of [_____] Again, we acknowledge that these figures indicate that the Beneficiary's work has had impact on the AI field, but note that they do not provide a complete picture as to the extent and nature of that impact.

More information regarding this aspect of the Beneficiary's work is provided by [_____] [_____] of the University [_____] who writes in his reference letter that he first met the Beneficiary at this conference. He states that being selected to present at this conference "is a tremendous honor that separates [the Beneficiary] from others in his field," but he does not provide figures such as the rate of acceptance of submitted papers, or the total number of papers presented at the conference, to support this assertion. [_____] goes on to state that the Beneficiary's paper "is by far the best research on the task of [_____] extraction," and notes that "this

was the first application of [ ] to any [ ] task." He further indicates that this research "is of practical importance" since it removes the [ ] engineering" step and thus saves time and money. However, he does not explain the extent to which the Beneficiary's work has affected that of other AI researchers, been implemented by them, or been acclaimed in the industry in other ways.

As we have noted in the above analysis, while some of the reference letters submitted provide detail regarding the technical aspects of the Beneficiary's work, none provide the same level of specificity when explaining its impact upon the field of AI. Depending on the specificity, detail, and credibility of a letter, USCIS may give the document more or less persuasive weight in a proceeding. The Board of Immigration Appeals (the Board) has held that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The Board also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." Id. If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998). Here, several of the letter writers conclude that the Beneficiary's work is "relevant" to the AI field and industry, but do not provide further details about how it has gone beyond relevance and gained sustained acclaim at the national or international level. The conclusions that several of the writers make regarding his elevated standing in the field are therefore not supported by their own statements, nor are they corroborated by documentary evidence.

The Petitioner also submitted evidence regarding the Beneficiary's work since joining its research team in 2017, as well as the role he has played for the company. [ ] Head of AI Engineering for the Petitioner, writes that the Beneficiary has continued his research in [ ] [ ] for text analysis, and that models he has developed have improved the performance of software "by nearly 5% in precision and recall." He further states that these models and software are used by several of the Petitioner's teams and products. In addition, [ ] notes that the Beneficiary has co-instructed four courses in ML and NLP given to the Petitioner's engineers, which has led to the development of four machine learning products within the company. Although the Beneficiary has clearly contributed to the Petitioner's research efforts in the field of AI, and his work has improved the efficiency of the work of others employed by the Petitioner, the evidence does not establish that he has played a critical role for the company's overall organization. Although the systems and products improved through the Beneficiary's efforts are important to the Petitioner's core business, the evidence does not show that the incremental upgrades accomplished through the application of his work have been critical to the company's overall success.

In addition, this reference letter does not establish that the Beneficiary's work during his employment with the Petitioner has received acclaim in the broader AI field. [ ] writes that the results were published at the 2019 [ ] part of the [ ] [ ] conference, "the leading venue for researchers around the world to publish [ ] related ideas." We acknowledge that the dissemination of this work makes it available to researchers in the AI field beyond those employed by the Petitioner, but the record does not include evidence which shows that it garnered national or international acclaim for the Beneficiary.

Regarding the Beneficiary's participation as a peer reviewer, the Petitioner argues on appeal that the Director employed novel legal standards in finding that this participation was routine and did not exceed that of other researchers, and that he ignored the evidence of the acclaim of those journals and conferences. As for the first point, we note that the Director did not make these findings when determining whether the Beneficiary met the plain language requirements of the criterion at 8 C.F.R. § 204.5(h)(3)(iv), but when considering whether he has garnered sustained national or international acclaim and is one of the small percentage at the top of his field. This analysis necessarily involves a comparison of the Beneficiary's accomplishments against those of all other researchers in his field, and we conclude that the Director's findings are pertinent and well within the framework of the final merits determination per *Kazarian*.

Turning to the Petitioner's second point about the Beneficiary's work as a peer reviewer, it notes that he conducted this work for some of the same highly-ranked conferences at which his work was published, including[   ],[   ] and[   ] The Petitioner states that the Beneficiary "has not simply participated in widespread peer review processes. He has conducted peer reviews for the largest, well-known and prestigious conferences and publications in his field of endeavor." While we acknowledge that scientific conferences and journals rely upon experts such as the Beneficiary to review papers which are submitted for presentation or publication, the Petitioner has not explained how the prestige of these conferences bestows acclaim on the many anonymous reviewers that are needed to provide recommendations to session chairs making the ultimate decision on which papers will be presented.

The record also includes evidence of the Beneficiary's salary, as well as comparative data showing that it exceeds the national 90th percentile salary for the position of "Computer and Information Research Scientists." We agree that this evidence shows that his salary is high when compared to others in his field, and reflects the level of education and expertise he possesses. However, when considered together with the totality of the evidence as analyzed above, this evidence does not sufficiently demonstrate that the Beneficiary is one of the small percentage at the top if his field.

III. CONCLUSION

The evidence shows that the Beneficiary is an accomplished researcher who has already made some degree of impact in the field of artificial intelligence. Although he has published several articles in the proceedings of scientific conferences, some of which have been cited by other researchers hundreds of times, the record does not contain evidence which establishes that this work has brought him acclaim at the national or international level. In addition, his publication record, participation in the peer review process, and salary, when considered together, do not show that he is among the small percentage of AI researchers at the top of the field.

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 the Beneficiary's 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"

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as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act.

For the reasons discussed above, the Petitioner has not demonstrated the Beneficiary's 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.