U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 14274123

Date: APR. 5, 2021

Appeal of Nebraska Service Center Decision

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

The Petitioner, a designer and manufacturer of [ ] vehicles, seeks to classify the Beneficiary, a [ ] engineer, 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 Beneficiary had satisfied only two of the ten initial evidentiary criteria, of which he must meet at least three.

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)(A) 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 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 has employed the Beneficiary as [redacted] engineer since 2018. Because the Petitioner has not indicated or established that the Beneficiary has received a major, internationally recognized award at 8 C.F.R. § 204.5(h)(3), he must meet 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 Beneficiary satisfied only two of the initial evidentiary criteria, judging at 8 C.F.R. § 204.5(h)(3)(iv) and scholarly articles at 8 C.F.R. § 204.5(h)(3)(vi). On appeal, the Petitioner maintains the Beneficiary's eligibility for two additional criteria. After reviewing all of the presented evidence, the record does not reflect that the Beneficiary meets the requirements of at least three criteria.

A. Evidentiary Criteria

> *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).

In order to satisfy the regulation at 8 C.F.R. § 204.5(h)(3)(v), a petitioner must establish that not only has the Beneficiary made original contributions but that they have been of major significance in the field.[1] 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 in the field.

The Petitioner did not initially claim the Beneficiary's eligibility for this criterion based, in part or in full, on citation numbers. Instead, the Director conducted his own *Google Scholar* search and found "no profile associated with the beneficiary's name" and requested "what, if any additional Google

[1] *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), https://www.uscis.gov/policymanual/HTML/PolicyManual.html (finding that although funded and published work may be "original," this fact alone is not sufficient to establish that the work is of major significance).

Scholar profile and labels are associated with the beneficiary's publications." In response, the Petitioner argued about the accuracy and reliability of citation counts. In denying the petition, the Director referenced figures "from the Google Scholar database revealed the profile associated with the beneficiary's name" and compares the Petitioner's cumulative citations to "other published experts in the beneficiary's field of endeavor" to "show[] that scientists who have risen to the very top of the beneficiary's field have garnered citations numbered in the thousands."[2]

Neither the statute nor the regulations require the Petitioner to submit citatory evidence for this criterion. As guidance, examples of original work that constitutes major, significant contributions include, but not limited to, peer-reviewed presentations at academic symposia or peer-reviewed articles in scholarly journals that 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 the individual's work as authoritative in the field.[3] Generally, citations can serve as an indication that the field has taken interest in an individual's research or written work. In addition, citatory evidence may contain probative value in corroborating statements in recommendation letters or supporting other documentation in establishing the significance of the contributions. If the Petitioner provides citatory evidence, the burden remains with the Petitioner to show the accuracy, reliability, and relevance of those figures and explain how they demonstrate original contributions of major significance in the field.

The comparison of a beneficiary's cumulative citations to others in the field is often more appropriate in determining whether the record shows sustained national or international acclaim and demonstrates an individual who is among that small percentage at the very top of the field of endeavor in a final merits determination. *See Kazarian* 596 F.3d at 1115. Again, the issue for this criterion is whether a beneficiary has made original contributions of major significance in the field rather than how the citations reflect a beneficiary's national or international acclaim or where the cumulative citations rank among other renowned scientists in the field. However, a comparison of citations of a beneficiary's individual article to a particular scientific article that the field views as being majorly significant may be probative to establish a citation baseline for majorly significant scientific articles in the field.

On appeal, in arguing the unreliability and inaccuracy of using *Google Scholar* labeling data, the Petitioner provides cumulative citations from *Google Scholar* for other scientists depending on various labels and submits the Beneficiary's *Google Scholar* individual article citations showing that his highest cited article received 35 citations. Although the Petitioner does not contend using citatory evidence to establish the Beneficiary's eligibility, the record does not reflect that the citation figures for any of the Beneficiary's individual articles demonstrate contributions of major significance in the field as the Petitioner did not offer evidence explaining the relevance of the citation numbers. Moreover, as previously discussed, comparing cumulative citations to other scientists is more appropriate in a final merits determination where the probative nature of the evidence would be best addressed. Given that the Petitioner does not argue the Beneficiary's eligibility based on citatory evidence and the Director's improper application of comparing the Beneficiary's cumulative citations

[2] The Director included screenshots of the Beneficiary's *Google Scholar* profile under the labels [redacted] and [redacted]' screenshots of other individuals' *Google Scholar* cumulative citations, and a 2014 *Scientometrics* article relating to citation percentiles.
[3] *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8.

to other scientists to show his acclaim or overall placement in the field for this criterion, we will not further consider the *Google Scholar* data.

The Petitioner argues that the Beneficiary "is the named inventor on two patents for technologies assigned to ." In general, a patent generally recognizes the originality of an invention or idea but does not necessarily establish a contribution of major significance in the field. The Petitioner claims that is "has demonstrated the major significance of these original contributions by providing evidence of the commercialization of these technologies and of their impact on the field" and broadly lists exhibits. However, the Petitioner did not specifically identify the evidence and explain how it supports its assertions. The majority of the exhibits relate to recommendation letters that make no mention of the Petitioner's patents or describe how the commercialization of the patents resulted in widespread usage, signifying a contribution of major significance in the field. In fact, only three of the letters even referenced his patents, which were only briefly mentioned. For example, "[the Beneficiary] is the author of two patents regarding " , and "[i]n addition to his many patent and research publications, [the Beneficiary] has also served as a valuable source for the scientific community" . Neither letter elaborates nor explains the significance of the patents in the field.

Moreover, stated he collaborated with the Beneficiary on two patents and is set to apply these systems to their vehicles in the near future," indicating potential usage but does not show the influence in the overall field beyond the testing stages at .[4] Similarly, indicated that "[t]he algorithms he developed have been tested and validated by engineers on the further confirming the important timing and relevance of his work." Again, does not describe the overall impact of the Beneficiary's algorithms beyond s testing and validating stages.

The Petitioner also contends that the Beneficiary's "patented techniques have been cited in subsequent patents assigned to , , and more" and submits screenshots from patents.google.com. However, as the Petitioner did not make these claims and submit these documents before the Director, either at the time it filed the petition or in response to the Director's request for evidence, we will not consider these claims and documents in our adjudication of this appeal. *See Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988) (providing that if "the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the denial, we will not consider evidence submitted on appeal for any purpose" and that "we will adjudicate the appeal based on the record of proceedings" before the Chief); *see also Matter of Obaigbena*, 19 I&N Dec 533 (BIA 1988).

In addition to the letters discussed above, some of them reference the Beneficiary's research and contributions in terms of prospective impact or influence. For instance, the Beneficiary's research on the modeling "*can* reflect the aging process of '), "the accurate information provided by this method *can* protect the " , "this method *can* be utilized to develop the

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[4] *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8-9; *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 134-35 (D.D.C. 2013) (upholding a finding that a ballroom dancer had not met this criterion because she did not corroborate her impact in the field as a whole).

systems for different ," , and ""[the Beneficiary's] research regarding the *can* drastically reduce the cost of a and modeling that [the Beneficiary] developed *can* be used to predict protect , and reduce the replacement" (emphasis added). Here, the letters hypothesize on the effect of the Beneficiary's research and work at some undetermined time in the future. The letters do not show that the significant nature of his research has already been realized or has been implemented or utilized in a manner consistent with major significance.

Moreover, the letters discuss the findings of the Beneficiary's research without further explaining how the work has resulted in contributions of major significance. For example, indicated findings from the Beneficiary's master thesis relating to a ' and his design of a ' ' However, did not elaborate and describe how this work has somehow affected the field in a significant manner. Likewise, stated that the Beneficiary's "research has built a critical bridge between the engineering models" and his algorithm estimates are ' ' Although he opines on the importance of the Beneficiary's findings, did not expand upon the impact or influence in the wider field.

Here, the letters do not contain specific, detailed information explaining the unusual influence or high impact that the Beneficiary's research or work has had in the overall field. Letters that specifically articulate how a beneficiary's contributions are of major significance to the field and its impact on subsequent work add value.[5] On the other hand, letters that lack specifics and use hyperbolic language do not add value, and are not considered to be probative evidence that may form the basis for meeting this criterion.[6] Moreover, USCIS need not accept primarily conclusory statements. *1756, Inc. v. The U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.C. Dist. 1990).

For the reasons discussed above, considered both individually and collectively, the Petitioner has not shown that the Beneficiary has made original contributions of major significance in the field.

> *Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.* 8 C.F.R. § 204.5(h)(3)(viii).

Regarding a critical role, the evidence must demonstrate that an individual contributed in a way that is of significant importance to the outcome of the organization or establishment's activities. It is not the title of a role, but rather the performance in the role that determines whether the role is or was critical.[7]

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[5] *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8-9.
[6] *Id.* at 9. *See also Kazarian*, 580 F.3d at 1036, *aff'd in part*, 596 F.3d at 1115 (holding that letters that repeat the regulatory language but do not explain how an individual's contributions have already influenced the field are insufficient to establish original contributions of major significance in the field).
[7] *Id.*

The Petitioner argues that the Beneficiary performed in a critical role and references two recommendation letters. Specifically, [redacted], in charge of [redacted] for the Petitioner, described the Beneficiary's role as [redacted] engineer, such as "[the Beneficiary] works with the [redacted] Department to design and create [redacted] that will maximize [redacted] ensure safety standards, offer optimal performance and handling, and reduce consumer cost." [redacted] listed other responsibilities, such as establishing novel designs for [redacted] systems; developing and designing testing, modeling, and assessing of [redacted] systems; creating the software for the [redacted] system; and collaborating with and providing hands-on support to other engineers during production, assessment, and deployment of [redacted] systems. Moreover, [redacted] stated that the Beneficiary's "extraordinary skills offer us a great strategic advantage and he plays an essential role in perfecting [the Petitioner's] [redacted] design."

Instead of describing how the Beneficiary has significantly contributed to the Petitioner's outcomes and activities, [redacted] offered a general job description and duties of the position. [redacted] did not provide specific information, explaining how the Beneficiary has performed in a critical role.[8] He did not, for example, detail the Beneficiary's contributions and show how his role as [redacted] engineer resulted in successes or achievements for the company, signifying a crucial or essential role.

Similarly, the letter from [redacted] previously discussed, reflects the nature of the role rather than how the Beneficiary has performed in a critical role for the Petitioner. Specifically, [redacted] stated that "[the Beneficiary's] essential role as [redacted] developer [for the Petitioner] involves applying his expertise in [redacted] systems to develop a [redacted] strategy to find the balancing point between the [redacted]" and "[t]his is an absolutely necessity for [the Petitioner's] vehicle to surpass its competition and improve the [redacted] industry." Again, [redacted] does not describe what contributions the Beneficiary made in his role as [redacted] engineer for the Petitioner and how those contributions resulted in the successful outcomes or activities of the company. [redacted] for instance, did not identify the Beneficiary's [redacted] strategy and how it impacted the business.

In addition, the Petitioner initially claimed that the Beneficiary met this criterion "through his post-doctoral tenure at [redacted]." Specifically, the Petitioner stated that [redacted] in [redacted] Program, one of the world's leading research programs in [redacted] has partnered with [redacted] to advance the development of [redacted] vehicles," and "[d]uring his doctoral and post-doctoral tenure at [redacted], [the Beneficiary] played a critical role in leading key research for this program." As it related to [redacted] the Petitioner provided documentation regarding the university's rankings, and media articles reporting on [redacted]'s "notable accolades for research" and collaboration with [redacted] In response to the Director's RFE, the Petitioner contends that the Beneficiary "played a pivotal role in the [redacted] project." Further, the Petitioner stressed the [redacted]" and

[8] *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 10 (stating that letters from individuals with personal knowledge of the significance of a petitioner's leading or critical role can be particularly helpful in making this determination as long as the letters contain detailed and probative information that specifically addresses how the role for the organization or establishment was leading or critical).

the [redacted]' and stated that '[redacted] is a highly ranked research university in [redacted] Canada."

On appeal, the Petitioner no longer argues the Beneficiary's role with [redacted] overall. Instead, the Petitioner changes its claim and narrows the Beneficiary's role to '[redacted] [redacted]' and submits additional documentation. As the Petitioner did not make this claim and present these documents before the Director, either at the time it filed the petition or in response to the Director's request for evidence, we will not consider this claim and documents in our adjudication of this appeal.[9] *Soriano*, 19 I&N Dec. at 766; *see also Obaigbena*, 19 I&N Dec at 533. Furthermore, although the Petitioner references testimonial letters from [redacted], [redacted], and [redacted] they do not discuss how the Beneficiary's role with the [redacted] project constituted a critical role for [redacted] The letters do not indicate or explain how the Beneficiary's contributions to the project resulted in essential or crucial outcomes or activities for [redacted]

Accordingly, the Petitioner did not demonstrate that the Beneficiary satisfied this criterion.

B. O-1 Nonimmigrant Status

We note that the record reflects that the Beneficiary received O-1 status, a classification reserved for nonimmigrants of extraordinary ability. Although USCIS has approved at least one O-1 nonimmigrant visa petition filed on behalf of the Beneficiary, the prior approval does not preclude USCIS from denying an immigrant visa petition which is adjudicated based on a different standard – statute, regulations, and case law. Many Form I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990). Furthermore, our authority over the USCIS service centers, the office adjudicating the nonimmigrant visa petition, is comparable to the relationship between a court of appeals and a district court. Even if a service center director has approved a nonimmigrant petition on behalf of an individual, we are not bound to follow that finding in the adjudication of another immigration petition. *See La. Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, at *2 (E.D. La. 2000).

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 conclusion that the Petitioner has established the Beneficiary's acclaim and recognition required for the classification sought.

The Petitioner seeks a highly restrictive visa classification for the Beneficiary, 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

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[9] In order to meet this criterion, the Petitioner would also have to establish the distinguished reputation of [redacted]

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" 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 Beneficiary 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). Although the Beneficiary has judged some journal and conference papers and authored a few scholarly articles, the Petitioner did not establish that he is among the upper echelon in his field.

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.