U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 11823960

Date: FEB. 26, 2021

Appeal of Nebraska Service Center Decision

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

The Petitioner, a computer engineer and researcher, 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 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 Ph.D. in electrical and computer engineering from [redacted] University, and underwent postdoctoral training at the [redacted] from 2016 to 2018. His work at [redacted] involved [redacted] communication relating to the Internet of Things (IoT), such as the use of [redacted] to search inventory [redacted] and scanning medical implants powered by [redacted] rather than batteries. He is now a senior engineer at [redacted] where "he is focusing on [redacted] networks architectures, continu[ing] research into [redacted] network design, as well as network [redacted] through [redacted] techniques."[1] The Petitioner is named on several U.S. patents.

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

---

[1] We note that the Petitioner submits a copy of an approval notice, showing that [redacted] filed an immigrant petition on his behalf in March 2019, seeking to classify him as an outstanding professor or researcher under section 203(b)(1)(B) of the Act. That petition, approved in May 2019, has an earlier priority date than the petition now on appeal. For visa number allocation purposes, both petitions fall within the same classification. Therefore, the approval of the present petition would not expedite the Petitioner's ability to become a lawful permanent resident. Furthermore, because the Petitioner's employment at [redacted] predates the filing of, and is not predicated upon, the present petition, the dismissal of this appeal does not present any legal obstacle to his continued employment there while he pursues adjustment of status incident to that employment.

[2] *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),

The Director acknowledged that the Petitioner has written scholarly articles and participated in peer review of articles written by others. Nevertheless, writing and reviewing such articles appear to be routine in the Petitioner's field, rather than a privilege reserved for acclaimed individuals at the top of the field. The Director also noted that others have cited the Petitioner's published work, but the Director determined that the Petitioner did not establish that only those at the top of the field are cited at a comparable rate. The Director concluded that, while the Petitioner "has won the respect of his collaborators, employers, and others . . . , the record stops short of . . . [establishing] sustained national or international acclaim."

On appeal, the Petitioner asserts that the Director "fail[ed] to review the substantial documentary evidence of record showing Beneficiary to be a top figure within the area of [redacted] network and automation." The Petitioner states, for instance, that the Director disregarded evidence showing that the Petitioner "was asked to [participate in] peer review because of his sustained national and international acclaim."

The evidence does not fully support the Petitioner's assertions on appeal. For example, the Petitioner states:

> Because of Petitioner's work and his sustained acclaim, Petitioner was invited to peer review 21 different articles for 3 high-impact and internationally circulated journals. Generally only those who are at the very top of their area of expertise are invited to peer review on these journals, and the submitted evidence includes proof that Petitioner was asked to peer review because of his sustained acclaim (see Petition Exhibit 7.2). He was also asked to serve on three technical program committees because of his extraordinary ability.

Exhibit 7.2 is a set of email printouts relating to an invitation for the Petitioner to review a manuscript submitted for publication in *Transactions on Mobile Computing* (*TMC*). The invitation message from an associate editor reads, in part:

> I am overseeing the review process of this paper and believe you are one of the experts best qualified to judge whether or not this paper should be accepted by the journal.
>
> . . . .
>
> TMC relies heavily on expert reviewers such as yourself to maintain the quality and relevance of the journal. . . .
>
> . . . .
>
> If you are unable to complete the review at this time, we would be grateful if you could recommend a qualified student, postdoc, or colleague to review this paper.

---

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).

This message does not support the claim that "only those who are at the very top of their area of expertise are invited" to participate in peer review. The letter refers to the Petitioner as an "expert," but one can be an "expert" without being "at the very top of [one's] area of expertise." The quoted invitation clearly indicates that students and postdoctoral trainees participate in that journal's peer review process, even though, by definition, they have not yet completed their training. The Petitioner himself was still a doctoral student when he received the quoted invitation in 2016. The record shows that the Petitioner received one peer review invitation in November 2011, less than two years after he received his bachelor's degree. None of the invitation emails in the record indicate or imply that peer review is a privilege restricted for top experts, rather than a responsibility shared by individuals with relevant subject matter knowledge.

The Petitioner states that 20 submitted articles show that "his research was featured in media across the world," and protests that the Director inaccurately referred to "merely 'an article.'" With the lone exception of a 2015 article in a newsletter, reporting that the Petitioner "won third place in [a] Student Paper Competition," all of the submitted articles date from 2017 and 2018, most of them either published directly by or sourced from press releases. (The Petitioner acknowledges that several such articles were "re-shared" from s website.) This narrow time window does not indicate a sustained history of media attention to his work, either before or after his time at . Because this media attention is almost entirely limited to the Petitioner's work at , it bears noting that the Petitioner does not show that these projects received more media attention than other computer science projects at

Most of these articles do not mention the Petitioner's name, and therefore neither reflect nor contribute to the Petitioner's acclaim in the field. Others list the Petitioner among the coauthors of various papers but do not single him out or indicate that the entire research team stands at the top of the field. Thus, has not publicly highlighted the Petitioner's contributions to the research that took place there in 2017 and 2018.

Regarding the Director's reference to "an article," the one published article that devotes significant attention to the Petitioner appeared in the 2018 issue of *IEEE Signal Processing Magazine*. The article begins by stating that " and profiles three examples. One of those three examples was 's development of "a system that allows to from tens of meters away," so that specific items can be quickly located The article includes several quotations from the Petitioner, whom the article identifies as the lead researcher on the project. The article does not indicate that the various projects have already had a significant impact, thereby winning acclaim for the main participants. Rather, it describes the various projects as presenting "promising" "possibilities." The article does not indicate that the Petitioner is an acclaimed researcher, and the Petitioner has not shown that the publication of the article has contributed substantially to his recognition in the field.

In all, the articles in the record indicate that the media attention owes more to the reputation and acclaim of as an institution, rather than to the Petitioner as an individual. Consistent with this conclusion, the record contains no articles about the Petitioner's subsequent work at

Letters in the record likewise focus on the Petitioner's work at [redacted] (and, in some instance, on the Petitioner's earlier undergraduate research at [redacted] which likewise involved [redacted]. These letters are not without weight, and they support the conclusion that the Petitioner has made original contributions of major significance. But, while the letters discuss the practical importance of certain contributions by the Petitioner, they do not establish that the Petitioner's work has led to him being nationally or internationally acclaimed as a researcher at the very top of his field.

The Petitioner asserts that his published articles are among the "most extensively cited" in the field, being "among the top 1% among Computer Science articles." At the time of filing, the Petitioner documented 18 articles published in journals or conference proceedings. According to a 2019 table from Clarivate Analytics that the Petitioner submitted, 1% of computer science articles published in 2017 had been cited 27 or more times. One of the Petitioner's 2017 articles had 30 citations at the time of filing. None of the Petitioner's other articles surpassed the 1% threshold at the time of filing. As such, the submitted evidence indicates some degree of influence for certain projects, but does not establish a pattern of heavy citation consistent with the *sustained* acclaim that the statute and regulations demand.

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 not shown that the recognition of his work is indicative of the required sustained national or international acclaim or demonstrates 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, his work at a prestigious institution attracted a certain level of publicity that does not appear to have followed him in his subsequent career.

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.