U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 13454774

Date: JAN. 29, 2021

Motion on Administrative Appeals Office Decision

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

The Petitioner, an applied mechanics engineer, seeks classification as an individual 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 initially denied the petition and subsequently affirmed his decision on motion, concluding that the Petitioner had satisfied only two of the initial evidentiary criteria for this classification, of which he must meet at least three. We dismissed the Petitioner's subsequent appeal. The Petitioner now submits a combined motion to reopen and motion to reconsider, together with new evidence, and asserts that he meets three evidentiary criteria and is otherwise qualified for the classification sought.

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 review, we will dismiss both motions.

I. MOTION REQUIREMENTS

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must (1) state the reasons for reconsideration and establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy, and (2) establish that the decision was incorrect based on the evidence in the record of proceedings at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

The regulation at 8 C.F.R. § 103.5(a)(1)(i) limits our authority to reopen or reconsider to instances where the Petitioner has shown "proper cause" for that action. Thus, to merit reconsideration, a petitioner must not only meet the formal filing requirements (such as submission of a properly completed Form I-290B, Notice of Appeal or Motion, with the correct fee), but also show proper cause for granting the motion. We cannot grant a motion that does not meet applicable requirements. *See* 8 C.F.R. § 103.5(a)(4).

II. LAW

Section 203(b)(1)(A) of the Act makes immigrant visas available to aliens with extraordinary ability. 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 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 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).

II. ANALYSIS

The issue before us on motion is whether the Petitioner has either submitted new facts sufficient to warrant reopening his appeal and/or established that our decision to dismiss his appeal was based on an incorrect application of USCIS law or policy.

A. AAO Decision

In our appellate decision, we acknowledged the Petitioner's claim that he meets five of the ten evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), summarized below:

- (ii), Membership in associations that require outstanding achievements;
- (iii), Published material in major trade publications or other major media;
- (iv), Participation as a judge of the work of others in his field;
- (v), Original contributions of major significance; and
- (vi), Authorship of scholarly articles.

In denying the petition, the Director concluded that the Petitioner satisfied the criteria related to judging the work of others and authorship of scholarly articles. *See* 8 C.F.R. § 204.5(h)(3)(iv) and (vi). We determined that the Petitioner met the authorship of scholarly articles criterion. However, we withdrew the Director's determination that the Petitioner satisfied the judging criterion after concluding that there was insufficient evidence of his participation in peer review activities. We also determined that the Petitioner had not satisfied the criteria relating to memberships and published materials. We reserved and

did not discuss the original contributions criterion at 8 C.F.R. § 204.5(h)(3)(v), noting that the Petitioner would not satisfy the initial evidence requirements even if he established that this criterion had been met.[1]

On motion, the Petitioner addresses the criteria relating to judging the work of others and original contributions. Specifically, he asserts that we overlooked certain evidence that was previously submitted and states that he is submitting new evidence establishing that he meets the judging criterion at 8 C.F.R. § 204.5(h)(3)(iv). He also requests that we review all evidence related to the original contributions criterion that we previously reserved, including new evidence submitted on motion.

For the reasons discussed below, we conclude that the new evidence submitted in support of the motion to reopen establishes that the Petitioner meets the judging criterion at 8 C.F.R. § 204.5(h)(3)(iv). However, he has not established that he meets a third criterion and has therefore not met the initial evidence requirements for this classification. Nor has the Petitioner demonstrated that our prior decision was based on an incorrect application of law or USCIS policy. Accordingly, the motion to reopen and motion to reconsider will be dismissed.

B. Evidentiary Criteria

As discussed, the Petitioner's combined motion addresses only two of the five criteria initially claimed. The Petitioner does not contest our determination that he did not satisfy the criteria relating to membership in associations and published materials about him and relating to his work. *See* 8 C.F.R. § 204.5(h)(3)(ii) and (iii).

> *Evidence of the individual's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specialization for which classification is sought.* 8 C.F.R. § 204.5(h)(3)(iv)

In our appellate decision, we withdrew the Director's determination that the Petitioner had satisfied this criterion. We acknowledged that the Petitioner had claimed eligibility based on his review of papers at the 2010 Advances in Materials and Processing Technologies (AMPT2010) conference, but determined that the submitted evidence only indicated that he had accepted an invitation to act as a peer reviewer for AMPT2010. Specifically, we acknowledged that the Petitioner submitted an e-mail from the conference chairman reminding him to conduct his paper reviews in a timely manner, but we found this evidence alone insufficient to establish that he actually fulfilled his role as a peer reviewer for the conference. We also noted that the record included a letter from [redacted] to the Petitioner inviting him "to act as a reviewer" for two journals in his field; however, we emphasized that the Petitioner did not provide any documentary evidence establishing that he actually reviewed papers or manuscripts for either journal.

In his brief on motion, the Petitioner maintains that the previously submitted evidence was sufficient to establish by a preponderance of the evidence that he met this criterion based on his peer review activities. We disagree as the Petitioner has not explained how the evidence referenced above

[1] *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach).

confirmed his participation as a judge.[2] The fact that the AMPT2000 conference chair thanked the Petitioner in advance for agreeing to participate and reminded him to complete his review in a timely manner does not establish that he ultimately completed his assigned peer review activities for this conference.

However, the Petitioner also submits new evidence in support of his motion to reopen that is sufficient to establish that he meets this criterion based on his completion of peer review activities for the journals referenced in [redacted]'s earlier letter.

As the Petitioner has now established that he has met the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vi), we will consider whether he has satisfied the third and final claimed criterion below.

> *Evidence of the individual'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 he made original contributions but that they have been of major significance in the field.[3] 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 asserts that he has made original contributions of major significance based on his doctoral dissertation at University [redacted], in which he studied [redacted] wear in [redacted] tools due to [redacted] interactions, and based on his work as a senior applied mechanics engineer with [redacted] where he worked on the development and commercialization of [redacted] supports and restraints for [redacted] applications in the energy industry.

The Petitioner references his submission of letters from colleagues and other scientists and experts regarding his original contributions in his field.[4] The letters summarize the Petitioner's research achievements and broadly discuss the potential impact of his mechanical engineering research in the [redacted] and [redacted] power industries. However, they do not establish that his original contributions are already recognized as majorly significant within these fields.

With respect to the Petitioner's graduate research, [redacted] who served on the Petitioner's dissertation committee at [redacted] notes that the Petitioner "had undertaken a difficult technical but important problem for developing countries' [redacted] sustainability." He explains that the Petitioner's study of [redacted] wear on [redacted] tools "provided a solution methodology . . . that allowed the time to replace the worn tool for developers of [redacted] and further states that "the results of [the

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[2] *See* USCIS Policy Memorandum PM 602-0005.1, *Evaluation of Evidence Submitted with Certain 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/policymanual/HTML/PolicyManual.html (noting that peer review for a journal may be a qualifying judging activity, provided that it is evidenced by a request from the journal to the individual petitioner to do the review, accompanied by proof that the petitioner actually completed the review).

[3] *Id.* at 8-9 (stating that although funded and published work may be "original," this fact alone is not sufficient to establish that the work is of major significance).

[4] Although we discuss a sampling of letters, we have reviewed and considered each one.

Petitioner's research] has impact in the field of removal and failure that will aid in the development of better tools and practices as the expanding need for increases in importance for developing countries." , a mechanical engineering professor at also discusses the Petitioner's doctoral research, noting that "tool wear is a major issue in operations" which "can lead to a decrease in quality and frequent downtime of equipment." He explains that the Petitioner's research methodology "can be used to optimize the tool material and the tool geometry" and to undertake "a rigorous study to understand the effects of parameters such as . . speed, power consumption, density, etc. has on the tool wear." further observes that the Petitioner's methodology "can potentially be used in designing new tools with increased wear-life that result in economic benefits."

of , who indicates that he knows the Petitioner as "a professional, friend and neighbor," states that the Petitioner's study on wear of tools "can be used as a template to conduct an effective research on the study of wear phenomenon." He states that the Petitioner "has made enormous contributions that [are] directly applicable to the safety of complex mechanical systems," noting that his research techniques have both safety and environmental benefits. of the states that the Petitioner's research in this area "is a boon for the industry and will be a great help to researchers working on to make the more efficient." While all of these letters speak to the applicability and potential of the Petitioner's methodology for predicting and measuring tool wear, none explains with sufficient specificity whether or how the Petitioner's research has already been widely implemented or significantly impacted the field.

, a former faculty member at and research and development technology director at explains that the Petitioner's dissertation research "adopted a fundamental approach of simulating the interaction of a particle with a tool, and developed a better understanding of the mechanism by which the particle 'scratches' on the surface of the tool." He states that the Petitioner's study provided fundamental insights into the mechanics of this wearing process, and that "[s]uch fundamental understanding can be utilized to better design tools to minimize wear." emphasizes that the Petitioner was invited to publish and present the results of his work at the 2012 Customer Conference, and notes that his work was also highlighted in the company magazine *Community News*.[5] He indicates that the conference invitation and wider dissemination in the magazine was "due to the technical quality and fundamental importance of this work, and its potential applicability in other areas where interactions of particles and metal surfaces may be a concern."

While the inclusion of the Petitioner's published work in conferences and journals reflects the originality of that work, his publications and presentations alone do not establish that his research has been regarded as an original contribution of major significance in his field. At the time of filing, the Petitioner provided search results from *Google Scholar* indicating that his paper had been cited by others a total of seven times since its publication in 2012. The Petitioner did not provide any comparative data suggesting

[5] The record reflects that an article title appeared in the "Academic Update" section of the September/October 2012 issue of *Community News*. A letter from mentions that is the manufacturer of the finite element tool which the Petitioner applied in his research.

that this level of attention from other researchers reflects widespread commentary about his work that is commensurate with a remarkable influence or impact on that field.

We have also considered letters of recommendation that address the Petitioner's work on the development of [redacted] systems used in [redacted] production of electricity. [redacted], the Petitioner's former manager at [redacted], explains that the Petitioner and his team "spent four 4 years analyzing and developing the analysis of the [redacted] supports manufactured and supplied by [redacted]" and "established [redacted] models with the objective to use the template file for analyzing the design of regular supports and the customized supports for the customers/industry in the [redacted] industry for power generation." [redacted] notes that the Petitioner published "[redacted]" which he credits as "a tremendous contribution to the [redacted] support industry." However, he does not explain how the Petitioner's study has impacted the industry or how it has been regarded as a "tremendous contribution." The record reflects that the referenced paper was accepted for the 2015 ASME Power and Energy Conservation Conference. However, the evidence does not demonstrate that the Petitioner's work has been cited by other researchers or otherwise establish that the study has attracted widespread commentary or been implemented by others in the industry.

[redacted] formerly a project engineer for one of [redacted] customers, also describes the Petitioner's research in this area, noting that "[h]e outlined a procedure for the design check and used analytical and finite element analysis tools to create the design checks." He discusses the above-referenced paper, noting that "the comparison of almost forty years of Codes is a huge task" and "his approach is innovative and based on modern methods of technical evaluation." Finally, [redacted] credits the Petitioner with making recommendations "that directly helped improve the safety and lessen the impact on the surrounding environment" but does not provide further explanation or examples of how the Petitioner's study achieved these safety and environmental improvements or how it has been implemented in the industry.

The record also contains two letters from [redacted], the Petitioner's colleague at [redacted] who explains that the company is a world leader in [redacted] supports used in [redacted] power production, as well as [redacted] and [redacted] facilities. In addition to mentioning the study discussed above, [redacted] indicates that the Petitioner was "placed in the lead role for developing a new, for [redacted], product line, [redacted] supports," which he states are critical components used in the production of [redacted] gas. He explains that manufacturing of these supports was moved from a sister facility in China to [redacted]'s U.S. operations, and that the Petitioner was "one of the leading influencers of making this transition successful." [redacted] also credits the Petitioner for being "intimately involved in developing automation tools to expedite the creation of these supports for new projects." Finally, he emphasizes that these [redacted] supports are developed for global and multibillion-dollar industries, and as such the Petitioner's "innovative work had a substantial contribution, not only economically but also in ensuring the safe implementation of these supports." [redacted]'s letter provides support for his conclusion that the Petitioner was a valuable asset to [redacted] and a highly skilled engineer, but he does not explain how his role in the transfer of his employer's [redacted] support manufacturing from China to the United States amounts to an original contribution of major significance in the field, or sufficiently explain how the Petitioner tremendously impacted "the safe implementation of these supports," which he indicates must be designed in accordance with industry codes and regulations.

Overall, the letters recognize the originality, importance, and/or prospective benefit of the Petitioner's graduate research and professional contributions at [redacted] but do not contain detailed information showing the unusual influence or high impact the Petitioner's contributions have already had in the engineering field or in the [redacted] and [redacted] support industries. With respect to his graduate research, the letters, including those not specifically mentioned, as well as other evidence in the record, show that the Petitioner's original work has added value to the pool of knowledge in his field and opened avenues for further research into the causes and measurement of wear on tools and machines used in [redacted] The evidence, however, is insufficient to confirm that the level of attention his work has received in this area reflects widespread commentary and acceptance of his work, or that the mechanical engineering field regards his work as authoritative. Similarly, while the Petitioner published a study during his tenure at [redacted] and introduced efficiencies into its [redacted] support design process, the Petitioner's letters do not contain specific, detailed information explaining the unusual influence or high impact his research or work has had in the wider field. Letters that specifically articulate how a petitioner's contributions are of major significance to the field and its impact on subsequent work add value.[6] On the other hand, letters that lack specifics do not add value, and are not considered to be probative evidence that may form the basis for meeting this criterion.[7]

Although the Petitioner submits additional letters on motion, they do not offer further insight into how his original research has already influenced or impacted the field. For example, [redacted] states that the methodology the Petitioner generated in his dissertation "finds a wider application in the various industrial sectors" and notes that "companies associated with the [redacted] industry and implementing [the Petitioner's] research can have an upper hand over their competitors." He does not identify specific companies that had already implemented the Petitioner's methodology into their design and development of [redacted] or [redacted] tools or otherwise elaborated on any documented impacts of his work. The record also contains background information on the [redacted] and [redacted] production industries and their importance but it does not follow that any research that contributes to incremental advancements in an important industry is an original contribution of major significance within the meaning of 8 C.F.R. § 204.5(h)(3)(v).

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

III. CONCLUSION

The Petitioner has not shown that we incorrectly applied law or policy in our previous decision, nor does the new evidence submitted on motion establish that he meets at least three of the ten evidentiary criteria for this classification. Accordingly, the motions will be dismissed.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.

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[6] *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8-9.
[7] *Id.* at 9.