U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 13495683

Date: MAR. 29, 2021

Appeal of Nebraska Service Center Decision

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

The Petitioner, the chief executive officer of a robotics company, 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 denied the petition, concluding that the record did not establish, as required, that the Petitioner meets at least three of the ten initial evidentiary criteria for this classification. The matter is now before us on appeal.

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 conclude that the Petitioner has not met this burden. Accordingly, 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).

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 mechanical engineering at [redacted] University in 2017. During his graduate studies, he performed research in the university's [redacted]. He is now employed as the chief executive officer and co-founder of [redacted] which is headquartered in [redacted] with offices in China.

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 has claimed to meet up to six of the ten criteria, summarized below:

- (i), Lesser nationally or internationally recognized awards or prizes;
- (iii), Published materials in professional publications or major media;
- (iv), Participation as a judge of the work of others;
- (v), Original contributions of major significance;
- (vi), Authorship of scholarly articles; and
- (viii), Leading or critical roles for organizations with a distinguished reputation.

The Director found that the Petitioner met one criterion, related to his authorship of scholarly articles in professional publications. See 8 C.F.R. § 204.5(h)(3)(vi). The record supports the Director's determination, as it contains evidence that the Petitioner has co-authored articles published in scientific journals and conference proceedings, including International Journal of Robotics Research, Science Robotics, and IEEE Transactions on Robotics.

On appeal, the Petitioner asserts that he submitted sufficient evidence to establish that he meets up to four additional criteria. After reviewing all of the evidence in the record, we conclude that the

Petitioner meets two additional criteria, discussed below, and therefore satisfies the initial evidence requirements for this classification.[1]

As it relates to the leading and critical roles criterion at 8 C.F.R. § 204.5(h)(3)(viii), the Director determined that the Petitioner performs in a qualifying role for [redacted] However, the Director observed that [redacted] noting that "the E11 visa classification is intended for 'that small percentage who have risen [not will rise] to the very top of the field of endeavor.'" On appeal, the Petitioner argues that the Director applied an improper standard by considering the longevity of the organization in evaluating whether it has a distinguished reputation, stating that such an analysis is contrary to USCIS guidance on this criterion.[2] We agree, and further emphasize that a determination of whether an individual's leading or critical role reflects their placement among those at the very top of the field is one which is appropriate in the final merits determination; it is not required by the plain language of 8 C.F.R. § 204.5(h)(3)(viii). Upon de novo review, we conclude that the Petitioner submitted sufficient evidence in the form of industry and media recognition to establish that [redacted] enjoys a distinguished reputation notwithstanding its relatively early stage of development.

The regulation at 8 C.F.R. § 204.5(h)(3)(v) calls for evidence of an individual's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field. We agree with the Petitioner's assertion on appeal that the Director did not give sufficient weight to expert opinion letters in the record.

For example [redacted] Director of [redacted]'s [redacted], explains that the Petitioner's "major contribution to the field is to the development of a [redacted] methodology for robots that significantly improves a robot's capability of performing [redacted] deemed too dangerous for human [redacted] He describes how the Petitioner's advancements in robotic [redacted] have been incorporated into (1) [redacted] robot designed by NASA's Jet Propulsion Laboratory (JPL) for [redacted] exploration; (2) the [redacted] robot developed by [redacted] and Google for [redacted] exploration; and (3) an ongoing project with NASA which involves using [redacted] to objects in space.

[redacted] Director of [redacted]'s [redacted] further discusses the Petitioner's work on the [redacted] project, in which the lab created "a [redacted] avatar that can perform complicated [redacted] tasks at [redacted]":

> [The Petitioner] developed a full set of methodologies that delivered [redacted] in complex environments including underactuated [redacted]

[1] The Petitioner does not contest the Director's conclusion that he did not submit evidence that satisfies the judging criterion at 8 C.F.R. § 204.5(h)(3)(iv). We therefore consider the Petitioner to have waived that criterion. 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).

[2] 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 10-11 (Dec. 22, 2010), https://www.uscis.gov/policymanual/HTML/PolicyManual.html (stating that the relative size or longevity of an organization is not in and of itself a determining factor in evaluating whether it has a distinguished reputation).

improvement in [redacted], [redacted] and learning, and contributed to development of [redacted] software for [redacted] These research results have had a significant impact on the robotics field and brought him numerous publications in . . . the top international journal and conferences in robotics and marked him as an expert in the [redacted] of robots in [redacted] environments.

The record shows that some of the Petitioner's published papers associated with these projects received coverage in science and mainstream publications, and researchers at other laboratories attest to the importance of the Petitioner's innovations in robotic [redacted] For example, [redacted] discusses the Petitioner's development of a '[redacted] deeming it "a powerful tool that accelerates robot development for better [redacted] ability in complicated conditions" and noting that it has been used by many other top university labs in the field. Overall, the letters provide sufficient detail, and are supported by sufficient supporting evidence, to establish the nature and significance of the Petitioner's contributions to several projects at [redacted] Based on this evidence, we conclude that he meets the criterion at 8 C.F.R. § 204.5(h)(3)(v).

Because the Petitioner has demonstrated that he satisfies three criteria, we will evaluate the totality of the evidence, including evidence submitted in support of the remaining claimed criteria, 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 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.[3] In this matter, we determine that the Petitioner has not shown his eligibility.

According to his curriculum vitae, the Petitioner received his bachelor's degree in mechanical engineering from [redacted] University in 2012 and his master's degree and Ph.D. from [redacted] University in 2014 and 2017, respectively. The record reflects that [redacted] was co-founded by the Petitioner and along with some of his fellow [redacted] alumni in 2016 or 2017, and that the Petitioner currently serves as its CEO.[4]

[3] See also USCIS Policy Memorandum PM 602-0005.1, supra at 4 (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).

[4] The record contains [redacted]'s offer letter to the Petitioner (dated September 2017) indicating that he was hired for the position of '[redacted]' The Petitioner's offer letter was signed by [redacted] in his capacity as CEO. However, more recent evidence, including press releases and contracts, consistently identifies the Petitioner as the company's CEO and legal representative.

As mentioned above, the Petitioner has authored scholarly articles, made original contributions through his graduate research at [redacted] and currently leads a robotics company that has earned a distinguished reputation among startups in its industry. We have also considered evidence related to recognition of the Petitioner's research and business-related endeavors in the form of media coverage and awards. The record, however, does not demonstrate that his achievements are reflective of a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990).

As it relates to his scholarly work, the Petitioner asserts on appeal that publication of articles "is not an easy task" and that "not every academic or researcher succeeds in publishing in peer-reviewed professional journals recognized as key to their particular field of study or research." While we do not disagree with this assertion, we emphasize that publication of research does not automatically place a scientist at the top of the field.[5] Here, the Petitioner demonstrated that he had authored approximately 20 articles published in scientific journals and conference proceedings at the time of filing. We acknowledge that [redacted] a fellow [redacted] graduate who collaborated with the Petitioner on research projects at [redacted], states that the Petitioner has published "an exceptional number" of articles "for someone his age." The Petitioner has not established, however, that the number of articles he published over the last five years is indicative of achieving national or international acclaim in his field, which includes scientists in the robotics field and not only those who have received their doctorate degrees within the last several years. Nor has he otherwise provided evidence that would meaningfully distinguish his publication record from that of others in the field.

As authoring scholarly articles is often inherent to the work of researchers, the citation history or other evidence of the influence of the Petitioner's articles can be an indicator to determine the impact and recognition that his work has had on the field and whether such influence has been sustained. While the record includes evidence of citations to his research, the Petitioner did not demonstrate that these citations represent attention at a level consistent with being among small percentage at the very top of his field.[6] See 8 C.F.R. § 204.5(h)(2). The Petitioner does not provide evidence demonstrating that these rates of citation are indicative of a high level of recognition in the field. The Petitioner, for instance, did not compare his citation statistics to others in his field of endeavor who are recognized as already being at the top in the field. Nor has the Petitioner otherwise demonstrated that his published work, individually or collectively, has garnered attention at a level indicative of sustained national or international acclaim. See section 203(b)(1)(A) of the Act.

In addition, to the Petitioner's citation history, we have considered evidence that several of the research projects in which he was involved at [redacted] were reported on in scientific and mainstream publications, including IEEE Spectrum, ScienceNews, and Wired. As noted, the Petitioner submitted testimonial evidence establishing his contributions to [redacted]'s high-profile endeavors related to the design of robots for [redacted] exploration. The media recognition sufficiently demonstrates

[5] See USCIS Policy Memorandum PM 602-0005.1, supra at 13 (noting that, as part of a multi-part analysis an individual's publications should be evaluated to determine whether they are indicative of the petitioner being one of that small percentage who have risen to the very top of the field of endeavor).

[6] The Petitioner's initial evidence included his Google Scholar profile, which indicated that his published work had cumulatively received 168 citations as of April 2019. He provided an updated profile in response to the Director's RFE which reflects 280 total citations as of May 2020. Continued citation of the Petitioner's work after the filing date speaks to the significance of that work, which we have granted, above; but it cannot retroactively establish eligibility at the time of filing. The Petitioner must meet all eligibility requirements at the time of filing. 8 C.F.R. § 103.2(b)(1).

that the projects were considered to involve important advances within the robotics field and wider scientific community.

However, the media coverage of these projects does not establish that the Petitioner garnered national or international acclaim based on his contributions. For example, articles published by ScienceNews and Wired regarding the Petitioner's co-authored Science Robotics article [redacted] contain quotes from several other members of the research team, including [redacted] and [redacted], a [redacted] graduate student identified as the lead author of the paper. Although the Petitioner's key contributions to this successful project are documented in the record and we recognized the significance of those contributions above, the media reports do not single him out or acknowledge him other than listing him among "additional [redacted] co-authors" of the paper discussed. The submitted media coverage of other projects undertaken at [redacted] is comparable. An IEEE Spectrum article titled "[redacted]" describes the origins of the [redacted] project, the challenges it overcame, and its success, and it includes quotes from [redacted] and others, but it does not mention the Petitioner. Therefore, while the Petitioner was deeply involved in important robotics research during his graduate studies at [redacted] the record, in the aggregate, indicates that the resulting acclaim for that work resides predominantly with the [redacted] and its permanent senior researchers, rather than specifically with the Petitioner.

We acknowledge that the Petitioner received some individual recognition during his time at [redacted] by co-authoring a paper that received a Best Paper Award on [redacted] at the 2016 IEEE International Conference on [redacted] held in Korea. However, the Petitioner submitted little information regarding this award beyond providing the award certificate itself, and a brief description of the purpose of the award. We recognize the Petitioner's claim that IEEE is internationally recognized organization, but the overall reputation of the organization does not provide sufficient basis for us to conclude that any award bestowed at any of its conferences is a nationally or internationally recognized award for excellence. The submitted evidence reflects that award winners and finalists for all awards given at the conference were listed on the conference website at iros2016.org/awards.html, but the record does not contain evidence of any other recognition associated with the award outside of the conference itself. The Petitioner has not provided evidence that he has been the recipient of other awards or that his receipt of this award at the IEEE [redacted] conference resulted in his national or international acclaim or placed him among that small percentage of robotics researchers at the very top of the field.

We have also considered evidence related to the Petitioner's role as CEO with [redacted] and its resulting impact on his standing in the field. The evidence shows that the company had received sufficient media and industry recognition at the time of filing to establish its reputation as one of the most [redacted] in its industry.[7] The Petitioner placed significant emphasis on the fact that Robotics Business Review, a major trade publication, wrote about [redacted] in its 2019 issue featuring the [redacted]. However, it was not listed among the Top 50, but rather was named by the publisher as [redacted]' which includes companies

[7] The evidence reflects that [redacted] exhibited its prototype trials for the first time in April 2019, approximately six months prior to the filing of the petition, and was still ramping up staffing and mass production capabilities at the time of filing.

that [redacted]. The article's description of [redacted] describes its [redacted] features. The Petitioner also provided evidence that Robotics Biz (robitcsbiz.org), named [redacted] among its [redacted]' in an article dated [redacted] 2019. That article credits [redacted] with creating [redacted] and notes that the company was founded "[redacted]" While the record contains evidence that the Petitioner is listed as co-inventor on many of [redacted]'s patent applications, neither article mentions the Petitioner and we cannot conclude that this recent industry recognition of the company's innovative product has garnered him individual recognition that rises to the level of national or international acclaim.

The evidence also establishes that, in 2019, various media outlets have either re-published [redacted] press releases or published articles reporting on those press releases. The first press release marked the Petitioner's launch of [redacted] at the annual [redacted] trade fair in [redacted] 2019. The press release and related articles identify the Petitioner as the company's co-founder and CEO and contain a brief quote from him regarding the [redacted]'s capabilities, but they are not about him. The second press release and related articles, published in [redacted] 2019, mark [redacted]'s release of [redacted]. This more recent press release and related articles do not mention the Petitioner. Here, the Petitioner did not establish that the media coverage of [redacted] reflects the Beneficiary's status as an individual who has garnered "sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation." See section 203(b)(1)(A) of the Act and 56 Fed. Reg. at 30704.

The Petitioner has also provided evidence that [redacted] has been the recipient of several industry awards, including the [redacted] Robot Award, the [redacted] Award, and the [redacted] Award. Of these three awards, only the [redacted] Robot Award was bestowed prior to the filing of this petition. With respect to the [redacted] Robot Award, we note that the award certificate is written in both English and Chinese and is not accompanied by a full English translation.[8] The Petitioner indicates that [redacted] is the recipient, but the portion of the certificate identifying the recipient has not been translated. Further, the record contains insufficient evidence regarding this award to support a finding that it is a nationally or internationally recognized award for excellence. For example, the record does not contain any additional information regarding the award or the awarding entity (the [redacted]), any media coverage related to the award, or any other relevant evidence of the national or international significance of the award in the Petitioner's field. Therefore, even if we determined that the Petitioner could be considered the award recipient, we could not conclude that [redacted]'s receipt of the award reflects he is among the small percentage of individuals at the very top of his field. The two remaining awards were received by [redacted] in 2020 and indicative of the company's growing industry recognition and reputation in the field, but do not support a finding that the Petitioner enjoyed sustained national or international acclaim as of the date of filing in 2019.

[8] Any document in a foreign language must be accompanied by a full English language translation. 8 C.F.R. § 103.2(b)(3). The translator must certify that the English language translation is complete and accurate and certify that they are competent to translate from the foreign language into English. Id.

The record as a whole, including the evidence discussed above, does not establish the Petitioner's eligibility for the benefit sought. The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than those progressing toward the top. USCIS has long held that even athletes performing at the major league level do not automatically meet the statutory standards for classification as an individual of "extraordinary ability." Matter of Price, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994). Here, most of the evidence related to the Petitioner's achievements dates from 2016 to 2019 and does not establish that his achievements to date, individual or collectively, have earned him a place among those at the very top of the field. While we acknowledge that an individual who is still early in their professional career may be able to demonstrate sustained national or international acclaim, the evidence here does not establish that the Petitioner had reached that level when he filed the petition. For the reasons discussed we find the record insufficient to demonstrate that the Petitioner has sustained national or international acclaim and is among the small percentage at the top of his field. See section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2).

C. O-1 Nonimmigrant Status

We note that the record reflects that the Petitioner has been granted 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 Petitioner, the prior approval does not preclude USCIS from denying an immigrant visa petition which is adjudicated based on a different statute, regulations and case law. Further, it must be emphasized that each petition filing is a separate proceeding with a separate record. In making a determination of statutory eligibility, USCIS is limited to the information contained in that individual record of proceedings. 8 C.F.R. § 103.2(b)(16)(ii). We are not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. See Matter of Church Scientology Int'l, 19 I&N Dec. 593, 597 (Comm'r 1988); see also Sussex Eng'g, Ltd. v. Montgomery, 825 F.2d 1084, 1090 (6th Cir. 1987).

Finally, 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 petition. See La. Philharmonic Orchestra v. INS, No. 98-2855, 2000 WL 282785, at *2 (E.D. La. 2000).

III. CONCLUSION

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, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.