U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27611613

Date: JUL. 28, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, an assistant professor of computer science, 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 Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner satisfied the initial evidence requirements for this classification by demonstrating his receipt of a major, internationally recognized award or by meeting at least three of the ten evidentiary criteria at 8 C.F.R. § 204.5(h)(3). The Director further concluded that the Petitioner did not establish that he seeks to enter the United States to continue work in his area of extraordinary ability and that his entry will substantially benefit the United States. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

Section 203(b)(1)(A) of the Act makes visas available to noncitizens:

- who have 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;
- who seek to enter the United States to continue work in the area of extraordinary ability, and
- whose entry 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 may demonstrate international recognition of their achievements in the field through a one-time achievement (that is, a major, internationally recognized award). Absent such an achievement, the petitioner must provide sufficient qualifying documentation demonstrating that they meet 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).

II. ANALYSIS

The record reflects that the Petitioner is an assistant professor and researcher in the field of computer science with research interests in the areas of Latent Semantic Indexing (LSI) based information retrieval, the semantic web, and data mining. He completed his bachelor's and master's degrees in computer engineering at a Chinese university and received his doctorate in computer science from [redacted] University in 2006. The Petitioner indicates he has been employed as an assistant professor of computer science for a community college within the City University [redacted] system since 2004. In separate statements, the Petitioner has expressed his intent to continue serving in his current faculty position as well as to start his own technology-based company that would rely on his research in the computer science field and expand it for commercial use.

A. Evidentiary Criteria

Because the Petitioner has not indicated or established that he has received a major, internationally recognized award, he must show that he satisfies at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Petitioner initially claimed to meet five of the ten criteria, summarized below:[1]

- (i), Lesser nationally or internationally recognized prizes or awards;
- (iv), Participation as a judge of the work of others;
- (v), Original contributions of major significance;

[1] In his response to a request for evidence (RFE), the Petitioner also claimed he could meet the criterion at 8 C.F.R. § 204.5(h)(3)(iii), which requires documentation of published materials about the individual and their work in professional publications or major media. The Director determined the submitted evidence did not satisfy this criterion. The Petitioner does not contest that determination on appeal, nor has he claimed that he meets the criteria at 8 C.F.R. § 204.5(h)(3)(ii), (vii), (ix) or (x). As the Petitioner provides no evidence or arguments addressing these five criteria on appeal, we consider them to be waived. *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. Atty. Gen.*, 401 F.3d 1226. 1228 n. 2 (11th Cir. 2005) (citing *United States v. Cunningham*, 161 F.3d 1343, 1344 (11th Cir. 1998).

- (vi), Authorship of scholarly articles; and
- (viii), Leading or critical role for distinguished organizations or establishments.

The Director determined the Petitioner satisfied only one of the claimed criteria, related to authorship of scholarly articles in professional publications, at 8 C.F.R. § 204.5(h)(3)(vi). We agree with that determination. The Petitioner provided evidence that he has published two articles that appeared in the journals *Data & Knowledge Engineering* and *Lecture Notes in Computer Science*.

On appeal, the Petitioner submits additional evidence and asserts that the Director reached unjustified conclusions with respect to the four remaining claimed criteria. He maintains that he satisfies at least three of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3) and is otherwise eligible for the classification sought.

For the reasons provided below, we conclude that the Petitioner has not demonstrated that he satisfies the requirements of at least three of the ten criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x).

> *Documentation of the individual's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.* 8 C.F.R. § 204.5(h)(3)(i)

To satisfy this criterion, the Petitioner must demonstrate he was the recipient of nationally or internationally recognized prizes or awards for excellence in his field of endeavor. Relevant considerations regarding whether the basis for granting the prizes or awards was "excellence in the field" include but are not limited to: the criteria used to grant the awards or prizes, the national or international significance of the awards or prizes in the field, and the number of awardees or prize recipients, as well as any limitations on competitors.[2]

At the time of filing, the Petitioner indicated he was submitting the following evidence in support of this criterion: (1) a September 2001 letter from a professor at [redacted] (his Ph.D. advisor) inviting him to participate in the MLabNet 2001 Seminar to be held in Japan in October 2001, in conjunction with the Tokyo-based National Institute of Informatics (NII); and (2) the January 2002 edition of *NII News* which is written almost exclusively in the Japanese language and was not accompanied by a certified English translation as required by 8 C.F.R. § 103.2(b)(3). The invitation to the MLabNet 2001 Seminar indicates that the Petitioner's expenses would be fully paid through the computer science department's National Science Foundation (NSF) grant.

In the RFE, the Director advised the Petitioner that his initial evidence did not establish he was the recipient of a nationally or internationally recognized prize or award for excellence in his field and therefore did not meet the plain language of this criterion. The Director provided a list of the types of evidence he could provide to establish eligibility and advised him of the need for translations of any foreign language documentation submitted. The record reflects that although the Petitioner responded to the RFE, he did not address this criterion in his response. Accordingly, the Director determined that he did not meet this criterion.

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[2] *See* 6 *USCIS Policy Manual* F(2) appendix, http://www.uscis.gov/policy-manual (indicating that an award limited to competitors from a single institution, for example, may have little national or international significance).

On appeal, the Petitioner, asserts that "having been INVITED and ATTENDED the National Science Foundation's MLabNet Seminar is a highly praised honor for any person who has been recognized for their exceptional work and contribution in the Computer Science field." He also emphasizes that the seminar was organized by the NSF's Office of International Science and Engineering, noting that invitees "have been technically 'internationally awarded' an opportunity to attend the seminar." He provides additional information regarding MLabNet and the purpose of the 2001 seminar and indicates he was invited because he "had . . . demonstrated his excellence in the field of endeavor."

The Petitioner resubmits a copy of the September 2001 invitation letter from his Ph.D. advisor at [redacted] and evidence related to the NSF grant that funded participation of the invitees. According to this documentation, the NSF awarded $5,290 to "support the participation of American scientists in a U.S.-Japan seminar on MLabNet 2000 advanced multimedia systems and applications." It indicates that the seminar's organizers "made a special effort to involve younger researchers, postdocs and graduate students as both participants and observers."

The record does not establish that the Petitioner has been the recipient of an award or prize for excellence in his field. While we acknowledge his claim that it was an honor for him to be invited to attend the MLabNet Seminar in Japan as a graduate student, we cannot conclude this invitation was an "award or prize," or that he was invited to the seminar in recognition of his excellence in the field. The only "award" documented is an NSF grant awarded to a university and intended to support any unnamed "American scientists" who may be invited to participate in the seminar. The Petitioner may have benefited from the grant award, but he was not the individual recipient. The grant abstract provides no criteria for the selection of participants and does not indicate whether those outside of the awarded university were eligible to be invited under the auspices of the NSF grant.

Finally, although the Petitioner initially indicated that he was submitting the January 2002 *NII News* publication in support of this criterion, it was not accompanied by the required English translation, and we cannot determine whether or to what extent it may support his claims. Therefore, for the reasons discussed, the Petitioner has not established that he meets the criterion at 8 C.F.R. § 204.5(h)(3)(i).

> *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)

To meet this criterion, a petitioner must show that they have not only been invited to judge the work of others, but that they have participated in judging the work of others in the same or allied field of specialization. Peer reviewing for a scholarly journal may meet this criterion if a petitioner provides evidence of a request from the journal for the person to do the review, and proof that the review was actually completed. *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2 appendix.

The Petitioner submitted evidence that he was invited to review three papers submitted to the NSF/National Institute of Justice (NIJ) Intelligence and Security Informatics Symposium held in Arizona in June 2003, along with evidence that he completed his peer review of all three articles. He also provided evidence that he reviewed a paper submitted for publication to *Information Sciences* in April 2008. While the Director concluded that the documentation did not demonstrate the Petitioner's

completion of peer review activities, we disagree and conclude that the submitted evidence is sufficient to satisfy the criterion at 8 C.F.R. § 204.5(h)(3)(iv).

> *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).

This criterion calls for evidence of a petitioner's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field. For example, a petitioner may show that their contributions have been widely implemented throughout the field, have demonstrably impacted or influenced the field, or have otherwise risen to a level of major significance in the field.

At the time of filing, the Petitioner indicated that he satisfied this criterion based on his "scholarly contributions done for NSF/NIJ," his "Retrieval Recommendations," and his article "[redacted]" which was published in *Data & Knowledge Engineering* in 2008. Based on the submitted documentation, the referenced "contributions done for NSF/NIJ" refers to the Petitioner's peer review activities for the 2003 NSF/NIJ Symposium on Intelligence and Security Informatics, while the "Retrieval Recommendations" appears to refer to his peer review service for the journal *Information Sciences*, in 2008. He did not explain how his peer review of other researchers' work could be considered an "original" contribution, nor did he provide support for a claim that his contributions as a peer reviewer have been of major significance in the field of computer science.

Similarly, the Petitioner submitted a copy of his article published in *Data & Knowledge Engineering* but did not identify or document how his research findings have been widely implemented throughout his field or how his research has impacted or influenced the field. Although funded and published work may be "original," this fact alone is not sufficient to establish that the work is of major significance. To satisfy this criterion, the Petitioner must demonstrate that the reaction from the field upon the dissemination of his work confirms that his research rises to the level of a "contribution of major significance" in the field. *See* 8 C.F.R. § 204.5(h)(3)(v).[3] The Petitioner did not provide a citation history for his published work or other evidence of its impact or influence, nor did he identify a specific original contribution he has made in his research area or explain the significance of his contributions.

In the RFE, the Director provided a list of the types of documentary evidence the Petitioner could submit, such as testimonial letters from experts in the field, evidence that people throughout the field regard his original contributions as important, evidence that his work has been widely cited or has provoked widespread commentary, or evidence that his work is being implemented by others. The Petitioner's response to the RFE did not address this criterion or include any additional evidence. Accordingly, the Director concluded that the Petitioner did not satisfy this criterion. The Director observed that the Petitioner's published research demonstrated original contributions in his field but emphasized that he had not provided evidence that his work had been widely cited. The Director also

[3] *See generally* 6 *USCIS Policy Manual*, *supra* at F.2 appendix, https://www.uscis.gov/policy-manual) (stating that "[p]eer-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, may be probative of the significance of their contributions to the field of endeavor).

noted, in both the RFE and the denial, that USCIS had reviewed the Petitioner's publicly available Google Scholar profile and found it did not support a finding that his work had received significant notice from others in the field.

On appeal, the Petitioner asserts that while his own publications have only 10 cumulative citations, his work "did indirectly garner hundreds of citations" because "his data was cited by other researchers and scholars as a very reliable source of data" and "their articles and publications did contribute to a major significance in the field of computer science." The Petitioner submits a Scotus citation history corroborating that his 2008 article has been cited 10 times. This evidence also provides citation counts for articles citing the Petitioner's work and shows that three of those articles have been cited 434, 375, and 126 times, respectively. He contends the Director's conclusion that he has not made contributions of major significance in the field of computer science is a "completely unjustified assumption."

The Petitioner also provides evidence his 2005 conference paper, "[redacted]" has been accessed digitally 707 times. Finally, he reiterates his previous claim that his peer review activities satisfy this criterion and submits evidence to document that one of the papers he reviewed for the 2003 NSF/NIJ Symposium on Intelligence and Security Informatics has been accessed 1,669 times. He states this level of interest in the paper demonstrates the major significance of his scholarly contribution.

As noted, the Petitioner was provided an opportunity to submit additional evidence in support of this criterion prior to the denial of the petition and did not address it in his RFE response. The Petitioner does not contend that the evidence provided for the first time on appeal was unavailable at the time he responded to the Director's RFE. Therefore, we need not consider this evidence. *See* 8 C.F.R. § 103.2(b)(11) (requiring all evidence requested in an RFE to be submitted together at one time); *see also 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"); *see also Matter of Obaigbena*, 19 I&N Dec 533 (BIA 1988).

Nevertheless, even if the Petitioner had submitted the same evidence in response to the RFE, it would be insufficient to show that he meets this criterion. The Petitioner asserts that his published work has garnered nearly 1000 "indirect citations" and appears to suggest that any paper referenced in a highly cited publication should be deemed a contribution of major significance in a given field. He provides no evidentiary basis for this broad supposition. He has not, for example, provided copies of the papers that cited his work in support of his claim that his research findings were highly impactful or influential on other researchers. Generally, citations can serve as an indication that the field has taken interest in a petitioner's published or presented work. However, the Petitioner has not demonstrated that the number of citations received by his published work is commensurate with a contribution of major significance.

The Petitioner provides evidence that one of his articles has been digitally accessed over 700 times, but the record does not contain comparative information, such as access data for other papers published in his field in the same year. Without supporting evidence to provide such context, he has not supported his claim that the total number of times his paper was accessed establishes the major significance of his published research. In addition, an access count does not tell us whether or how

the Petitioner's research findings have been used in subsequent studies. If access of his paper has rarely resulted in citations, then the access count does not appear to correlate to the impact or influence of the Petitioner's research in the field. Here, although he provided evidence that his 2005 conference paper was accessed 707 times, he did not provide evidence that this paper has been cited by any other researchers. Finally, the Petitioner provides evidence that an article he peer-reviewed prior to publication has been accessed over 1600 times and cited 22 times. Even if we determined that this article constituted a contribution of major significance in the field, it was not co-authored by the Petitioner and cannot be considered his original contribution to the field; his role was limited to the provision of edits and comments as part of his service as a peer reviewer.

The burden is on the Petitioner to not only identify his original contributions but to also demonstrate why they are considered to be of major significance in the field. Here, for the reasons discussed, the Petitioner has not met this burden.

> *Evidence that the individual 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)

This criterion requires a two-part determination in which we consider both (1) the significance of an individual's role within an organization or establishment (or within a division or department of an organization or establishment), and (2) the reputation of the organization or establishment (or its division or department). For a leading role, the evidence should establish that the individual is (or was) a leader within the organization. A title, with appropriate matching duties may help to demonstrate performance in a leading role. For a critical role, the evidence should establish that the person has contributed n a way that is of significant importance to the outcome of the organization or establishment's activities (or those of a specific division or department thereof. *See generally*, 6 *USCIS Policy Manual*, *supra*, at F.2 appendix. Letters from persons with personal knowledge of the significance of the individual's leading or critical role can be persuasive if they contain detailed and probative information that specifically addresses how the person's role within an organization or establishment was leading or critical. *Id.*

In a cover letter accompanying the petition, the Petitioner stated he "has performed in a critical role for organizations that have a distinguished reputation" and indicated he was submitting academic records relating to his bachelor's, master's and doctoral degrees; a copy of his Ph.D. dissertation; an academic credentials evaluation report; and proof of his membership in Triple Nine Society, which was granted based on his submission of score at or above the 99.9th percentile on a standardized intelligence or general aptitude test. He did not identify the organization(s) for which he performed in a critical role, identify the specific critical role(s) he has held, or provide letters from persons with knowledge of his performance in such roles. Further, he did not submit evidence intended to establish the distinguished reputation of a specific organization or establishment.

In the RFE, the Director acknowledged this evidence and other evidence submitted in support of the petition, and informed the Petitioner why it was insufficient to establish that he meets this criterion. The RFE provided a list of evidence the Petitioner could submit, emphasizing that letters from current or former employers with personal knowledge of the significance of his roles, or other documentary

evidence, may be particularly effective in supporting his claim. Although the Petitioner submitted a response to the RFE, he did not provide any additional evidence in support of this criterion.

On appeal, the Petitioner re-submits the evidence he previously provided in support of this criterion but does not articulate a claim that the Director erred in evaluating this evidence under the plain language of the criterion at 8 C.F.R. § 204.5(h)(3)(viii). The Petitioner states he has "continued to perform critical roles in organizations that have a distinguished reputation in the Computer Science field," noting he is now a member of the Institute of Electrical and Electronics Engineers (IEEE) Computer Society. He describes this association as "the world's leading membership organization dedicated to science and technology" and a "community for technology leaders." The evidence on appeal documents that the Petitioner became a member of IEEE and IEEE Computer Society in 2023.

We agree with the Director's determination that the Petitioner did not submit evidence to satisfy the plain language of this criterion. Based on the evidence he provided, he appears to rely on his academic achievements and association memberships rather than his performance in a leading or critical role for an organization or establishment that has a distinguished reputation.[4]

The record reflects that the Petitioner has spent most of his post-graduate professional career employed as an assistant professor for a community college within the [redacted] system in New York. However, he has not submitted evidence of his leading or critical role with this organization or evidence of the distinguished reputation of the college or department that employs him. A letter from his employer's human resources department provides his job title and current salary and confirms that he is responsible for "teaching courses and conducting research in the field of Computer Science." The letter does not contain sufficient detail to support a determination that the Petitioner performs in a leading or critical role for this organization. The record also contains a May 2000 employment offer letter from [redacted] The Petitioner's curriculum vitae indicates he worked for this company as a web developer from May 2000 until August 2001, but the record does not contain evidence that he performed in a leading or critical role or establish the company's distinguished reputation.

For the reasons discussed above, the Petitioner has not established that he meets the criterion at 8 C.F.R. § 204.5(h)(3)(viii).

B. Summary and Reserved Issues

The Petitioner has satisfied only two of the ten criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x) and therefore does not meet the initial evidence requirement for this classification. As noted, the Director also determined the Petitioner did not establish that he intends to enter the United States to continue work

[4] As noted, the Petitioner did not claim that he can satisfy the criterion at 8 C.F.R. 204.5(h)(3)(ii), which requires evidence of an individual's membership in associations in the field for which classification is sought, which require outstanding achievements of their members as judged by recognized national or international experts in their fields. Although the Petitioner was a member of Triple Nine Society at the time of filing, the record does not show this association is in the computer science or engineering field or that it requires outstanding achievements as judged by experts in the field. The Petitioner's membership in IEEE Computer Society post-dates the filing of the petition. A petitioner must establish eligibility for the benefit sought at the time of filing the benefit request and must continue to be eligible through adjudication. 8 C.F.R. § 103.2(b)(1).

in his area of extraordinary ability and that his entry would substantially benefit prospectively the United States as required by section 203(b)(1)(A)(ii) and (iii) of the Act and 8 C.F.R. § 204.5(h)(5). Detailed discussion of these remaining grounds for denial cannot change the outcome of this appeal. Therefore, we reserve and will not discuss the Petitioner's appellate arguments relating to these issues. *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); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

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 and conclude that it does not support a finding that the Petitioner has established the acclaim and recognition required for the classification sought.

The Petitioner seeks a highly restrictive visa classification. 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 his 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 Petitioner has garnered national or international acclaim in the field, and that 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).

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.