U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34812774

Date: DEC. 18, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, an entrepreneur in the artificial intelligence (AI)/machine learning field, seeks classification under the employment-based, first-preference (EB-1) immigrant visa category as a noncitizen with "extraordinary ability." *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). Successful petitioners for U.S. permanent residence in this category must demonstrate "sustained national and international acclaim" and extensively document recognition of their achievements in their fields. Section 203(b)(1)(A)(i) of the Act.

The Director of the Texas Service Center denied the petition and dismissed the Petitioner's following motion to reconsider. The Director concluded that the Petitioner met two of the requested category's ten evidentiary requirements – one less than needed for a final merits determination. On appeal, the Petitioner contends that she satisfied four additional evidentiary criteria.

The Petitioner bears the burden of demonstrating eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Exercising de novo appellate review, *see Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015), we conclude that she met at least one additional evidentiary requirement – contributions of major significance in her field – but did not demonstrate her required intent to continue working in the field in the United States. We will therefore withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

I. LAW

To qualify as a noncitizen with extraordinary ability, a petitioner must demonstrate that they:

- Have "extraordinary ability in the sciences, arts, education, business, or athletics;"
- Seek to continue work in their field of expertise in the United States; and
- Through their work, would substantially benefit the country.

Section 203(b)(1)(A)(i)-(iii) of the Act.

The term "extraordinary ability" means expertise commensurate with "one of that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). Evidence of extraordinary ability must demonstrate a noncitizen's receipt of either "a major, international recognized award" or satisfaction of at least three of ten lesser evidentiary criteria. 8 C.F.R. § 204.5(h)(3)(i-x).[1]

If a petitioner meets either evidentiary standard and the requirements at section 203(b)(1)(A)(ii), (iii) of the Act, U.S. Citizenship and Immigration Services (USCIS) must then make a final merits determination. To merit approval, the record – as a whole – must establish a petitioner's sustained national or international acclaim and recognized achievements placing them among the small percentage at their field's very top. *See Amin v. Mayorkas*, 24 F.4th 383, 391 (5th Cir. 2022) (finding USCIS' two-step analysis of extraordinary ability "consistent with the governing statute and regulation"); *see generally* 6 *USCIS Policy Manual* F.(2)(B), www.uscis.gov/policy-manual.

II. ANALYSIS

A. The Petitioner and Her Field

The record shows that the Petitioner, a Chilean national and citizen, received bachelor's and master's degrees in architecture and architecture technologies, respectively, from a university in her home country. A U.S. university later awarded her master's and doctorate degrees in the design and computation field. Her doctoral research focused on AI applications for learned simulations in the architecture, engineering, and construction industries. She then served as a post-doctoral fellow at the U.S. university, researching polymer modeling with physics learned simulations.

The Petitioner also served as a fellow in a U.S. climate and sustainability consortium. Further, she co-founded a U.S. company that seeks to develop compostable and biodegradable alternatives to traditional plastic packaging and serves as the firm's chief executive officer (CEO).

The Petitioner does not claim – nor does the record indicate – her receipt of a major internationally recognized award. She must therefore meet at least three of the ten evidentiary requirements at 8 C.F.R. § 204.5(h)(3)(i)-(x).

The record supports the Director's determinations that she submitted evidence of her participation as a judge of others' work in her field and her authorship of scholarly articles in the field. *See* 8 C.F.R. § 204.5(h)(3)(iv), (vi). On appeal, the Petitioner contends that she also provided proof of:

- Her receipt of nationally or internationally recognized awards for excellence in her field;
- Published material about her and her work in the field;
- Her original contributions of major significance in the field; and
- Her commandment of significantly high remuneration for her services.

See 8 C.F.R. § 204.5(h)(3)(i), (iii), (v), (ix).

[1] If an evidentiary criterion does not "readily apply" to a petitioner's occupation, they may submit "comparable evidence" to establish eligibility. 8 C.F.R. § 204.5(h)(4).

To satisfy an additional evidentiary criterion, the Petitioner's documentation must objectively meet the parameters of an applicable regulatory description. *See generally* 6 *USCIS Policy Manual* F.2(B).

B. The Petitioner Submitted Evidence of Original Contributions of Major Significance in Her Field

This criterion requires "[e]vidence of the [noncitizen]'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). When adjudicating this requirement, USCIS first determines whether a petitioner has made original contributions in their field. *See generally* 6 *USCIS Policy Manual* F.2(B)(1), Criterion 5. The Agency then considers whether the original contributions are of major significance to the field. *Id.*

The Petitioner claims two original contributions of major significance in the AI/machine learning field: her development of software that predicts the properties of polymers, which are used to make plastics; and her creation of software models regarding pedestrian flow characteristics. Several support letters from university professors demonstrate the originality and major significance of her contributions. *See Rubin v. Miller*, 478 F.Supp.3d 499, 505-06 (S.D.N.Y. 2020) (finding that detailed opinion letters established the major significance of a petitioner's original contributions in the neuroscience field).

The Petitioner created the pedestrian flow models while working on her doctoral dissertation: a digital representation of [redacted] Using sensors, she collected data from 8,000 pedestrians and calculated their speeds and time. She found that pedestrians behave similarly in different locations and that architectural layouts greatly affect people's movements.

The Director concluded that the Petitioner did not demonstrate the major significance of her contribution. But the Director overlooked support letters that she submitted. An assistant professor of architecture and environmental design cited the Petitioner's work on pedestrian flow and describes it as "at the forefront of machine learning and its applications to environmental problems." The professor stated: "The resulting model provides a framework for understanding human-space interaction and enhancing future designs. It offers valuable insights into how people navigate complex spaces and provides real-time feedback for evaluating building designs in a simulated environment." An assistant professor of architecture technology explained that prior modeling software had limited ability to simulate critical aspects of pedestrian movement, such as exploration. He said that the Petitioner's "method offers a new approach for architects to design spaces that are more user-friendly and optimized for human movement." He also said that the Petitioner's "work provides valuable insights into machine learning and its practical applications, making it an essential contribution to the field."

Using AI/machine learning principles she learned in her doctoral work, the Petitioner developed the polymer-predicting software while a post-doctoral fellow. She used "generative reinforcement learning" to predict polymer properties. Because traditional molecular dynamics tools are expensive and time-consuming, she developed a software that combines three-dimensional representations, polymer physics, machine learning, and chemical information to decrease computational costs of molecular simulation and extend its capabilities to more complex systems.

A U.S. professor of materials science and engineering described the Petitioner's polymer software as "a groundbreaking achievement in computational materials science." He said that she "has created a tool that promises to revolutionize our ability to predict, optimize, and comprehend the behavior of complex molecular systems. The potential applications . . . are far-reaching, spanning fields such as drug discovery, materials science, environmental engineering, and more." The managing partner of a venture capital fund said that his firm engaged in nine months of research before investing in the Petitioner's company. He stated: "She has created a unique AI platform that will be extremely difficult to replicate and will bring about an entirely new way of thinking about bio-based plastic alternatives. . . . We believe in her vision and capabilities as a CEO to remove the need for petrochemical-based plastics in all packaging."

The letters on the Petitioner's behalf are consistent, credible, uncontroverted, and supported by other evidence of record. She has therefore submitted evidence of original contributions of major significance in her field. *See generally* 6 *USCIS Policy Manual* F.2(B)(1), Criterion 5 ("Detailed letters from experts in the field explaining the nature and significance of the person's contribution may . . . provide valuable context for evaluating the claimed original contributions of major significance.")

As the Petitioner has met at least three of the category's evidentiary requirements, we will withdraw the Director's contrary decision. We need not reach and hereby reserve her appellate arguments regarding the other evidentiary criteria she claims to have met. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (per curiam) (holding that agencies need not make "purely advisory findings" on issues unnecessary to their ultimate decisions).

C. The Petitioner Did Not Establish Her Intent to Continue Working in Her Field in the United States

The Petitioner has satisfied the requested category's evidentiary requirements. Although unaddressed by the Director, however, she has not met all the category's statutory criteria.

Noncitizens with extraordinary ability must "seek[] to enter the United States to continue work in the area of extraordinary ability." Section 203(b)(1)(A)(ii) of the Act. The classification requires no job offer or certification from the U.S. Department of Labor. But a petition must include "clear evidence that the [noncitizen] is coming to the United States to continue work in the area of expertise." 8 C.F.R. § 204.5(h)(4). Such evidence may include:

- A letter from a prospective employer;
- Evidence of a prearranged commitment, such as a contract; or
- A petitioner's statement detailing plans on how they intend to continue their work in the United States.

The Petitioner submitted a copy of her most recent U.S. fellowship agreement. But the two-year pact indicates its expiration in September 2023. Contrary to section 203(b)(1)(A)(ii) of the Act, the record lacks evidence of the Petitioner's intent to continue working in the machine learning field in the United States after her proposed attainment of U.S. permanent residence.

The Director did not notify the Petitioner of this evidentiary defect. We will therefore remand the matter. On remand, the Director should inform the Petitioner of the required evidence and provide

her with a reasonable opportunity to submit it. If supported by the record, the Director may notify her of any additional potential denial grounds.

If the Petitioner does not establish her intent to continue working in her field in the United States, the Director should issue a new decision denying the petition. If, however, she demonstrates the requisite intent, the Director must make a final merits determination before approving or denying the filing.

III. CONCLUSION

The Petitioner satisfied the requisite three evidentiary criteria. She did not, however, demonstrate her intent to continue working in her field in the United States.

ORDER: The Director's decision is withdrawn. The matter is remanded for entry of a new decision consistent with the foregoing analysis.