U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29405673

Date: JAN. 23, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, a data scientist in the artificial intelligence/machine learning (AI/ML) 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). Petitioners may obtain U.S. permanent residence in this category if they demonstrate "sustained national or international acclaim" and recognition of their achievements in their fields. *Id.*

The Director of the Nebraska Service Center denied the petition. The Director concluded that the Petitioner satisfied two of ten initial evidentiary criteria - one less than needed to warrant a final merits determination. On appeal, the Petitioner contends that, contrary to the Director's decision, he met two other evidentiary requirements: original, scholarly contributions in his field; and published material about him relating to his work in the field.

The Petitioner must demonstrate eligibility for the requested benefit by a preponderance of the evidence. *See 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 agree with the Director that the Petitioner submitted insufficient evidence of published materials about him relating to his work in his field and original, scholarly contributions in the field. Nevertheless, we will withdraw part of the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

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;"
- They seek to continue work in their field of expertise in the United States; and
- Their work would substantially benefit the country.

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

The term "extraordinary ability" means a level of 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 standards. *See* 8 C.F.R. § 204.5(h)(3)(i-x).[1]

If a petitioner meets either of the evidentiary requirements discussed above, USCIS must then make a final merits determination, considering whether the record, as a whole, establishes sustained national or international acclaim and recognized achievements placing the noncitizen among the small percentage at the very top of their field. *See Kazarian v. USCIS*, 596 F.3d 1115, 1119-20 (9th Cir. 2010) (requiring a two-part analysis of extraordinary ability).

II. ANALYSIS

The record shows that the Petitioner, an Indian native and citizen, earned a doctorate in physics from a U.S. university and then worked for the school as a post-doctoral researcher in the AI/ML field. In that role, he designed an algorithm to automate computations, collaborating with the [redacted] and another U.S. university. He also worked as a data science consultant with two U.S. start-up companies. At one firm, he built a health spending recommendation system. At the other, he built data analytic tools to forecast customer volumes at car wash businesses in different parts of the country.

The record also shows that, between 2017 and 2020, scientific and academic journals published five research papers co-authored by the Petitioner. The papers primarily involve building theoretical models to study "singlet fission," a photochemical process, in organic solar cells.

In January 2021, the Petitioner began working at a financial company as an applied AI/ML associate. He builds ML models based on natural language processing theory to increase efficiency and reduce risks in the operations of his employer's legal department. He also works on data governance and quality issues. He stated that he intends to continue working in the United States in the AI/ML field, specifically for financial organizations.

The Petitioner has neither claimed nor demonstrated his receipt of a major, international recognized award. *See* 8 C.F.R. § 204.5(h)(3). He must therefore meet at least three of the ten preliminary evidentiary requirements. *See* 8 C.F.R. § 204.5(h)(3)(i-x).

The Director found that the Petitioner submitted evidence of his authorship of scholarly articles in his field and his performance in a leading or critical role for organizations with distinguished reputations. *See* 8 C.F.R. § 204.5(h)(3)(vi), (viii). The Director, however, found that he did not meet the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(iii), (v), or (ix). These criteria respectively require: published materials about him relating to his work in his field; evidence of his original scholarly

[1] If the regulatory standards do not readily apply to a petitioner's occupation, the noncitizen may submit comparable evidence to establish their eligibility. 8 C.F.R. § 204.5(h)(4).

contributions of major significance in the field; and proof of his commandment of a high salary in relation to others in the field.

On appeal, the Petitioner does not challenge the Director's finding regarding his salary. He has therefore effectively "waived" that issue. *See, e.g., Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (citing *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012)). We will therefore consider only his contentions regarding original scholarly contributions of major significance and published materials about him.

A. Published Materials

This criterion requires "[p]ublished materials about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought." 8 C.F.R. § 204.5(h)(3)(iii). USCIS should first determine whether published materials relate to the noncitizen and their specific work in their field. 6 *USCIS Policy Manual* F.(2)(B)(1), www.uscis.gov/policy-manual. The Agency should then determine whether publications qualify as professional, major trade, or major media publications. *Id.*

The Petitioner submitted copies of 12 research articles published in scientific journals from 2018 to 2021, citing his work on singlet fission. The Director concluded that the articles do not meet the published materials criterion. The Director found that they do not mention the Petitioner by name and "only cite to the petitioner's work in furtherance of the individual authors' own publications, research, and conclusions."

As the Petitioner contends on appeal, however, six of the research articles go beyond citing his work in footnotes. Rather, the bodies of these articles also refer to him by his last name and discuss his work. For example, one article states: "This assignment needs to be revised in view of the experimental work of [scientist #1] and the theoretical work of [the Petitioner] and [scientist #2]." The same article states: "The experimental work of [scientist #1] on the signature of the (TT) state has been verified independently by [the Petitioner] and [scientist #2]."

Under USCIS policy,

> the person and the person's work need not be the only subject of the material; published material that covers a broader topic but includes a *substantial discussion* of the person's work in the field and mentions the person in connection to the work may be considered material about the person relating to the person's work.

6 *USCIS Policy Manual* F.(2)(B)(1) (emphasis added).

Under USCIS policy, research articles citing, naming, and discussing a petitioner and their work could meet the published articles criterion. But we agree with the Director that, in this case, the research articles submitted by the Petitioner do not discuss him and his work substantially enough to meet this criterion. The multi-page articles focus on the broader topic of singlet fission, containing - at most - one or two paragraphs about the Petitioner and his work. Thus, we affirm the Director's decision that the Petitioner did not submit published materials meeting the criterion at 8 C.F.R. § 204.5(h)(3)(iii).

B. Original Contributions of Major Significance

To meet this requirement, a petitioner must submit "[e]vidence of the alien'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). USCIS should first determine whether a noncitizen has made original contributions in their field. 6 *USCIS Policy Manual* F.(2)(B)(1). If so, the Agency should then determine whether any of them are of "major significance." *Id.*

Evidence of significance may include proof that a noncitizen's published research has provoked widespread commentary from others in the field, or documentation that the research received a high number of citations compared to others' work in the field. *Id.* Detailed letters from experts in a field explaining the nature and significance of a noncitizen's contributions may also aid in evaluating contributions' importance, "particularly when the record includes documentation corroborating the claimed significance." *Id.*

As proof of original contributions of major significance, the Petitioner submitted letters from 11 other scientists and copies of the 12 published articles citing his work on singlet fission. The Director found that the letters do not demonstrate that the Petitioner's contributions have "major significance." The Director stated that none of the letters specify the significance of the Petitioner's contributions or analyze the impact they had on later work. The Director found that, while some letters discuss the "potential" of the Petitioner's research, they do not describe his work as having major significance. The Director stated: "It is clear from reading these letters, . . . that the petitioner is a well-respected member of the field but none of the authors point to specific original contributions that have major significance in the field."

As the Petitioner contends, however, many of the letters describe his work on singlet fission as important and discuss its implications. For example, a letter from a U.S. professor of electrical and computer engineering states that the Petitioner's "path-breaking work made it possible to accurately identify organic molecules that can be used in the fabrication of lower cost and highly efficient solar cell technology." Also, a U.S. physics professor stated:

> Due to his remarkable original contribution to this field, [the Petitioner] has gained widespread popularity and international acclaim in the scientific community, with major publications such as [the] [redacted] [redacted] featuring him and his works. In addition, as an expert in the field, he has presented his findings in numerous conferences, both in the U.S. and outside.

As the Petitioner further argues, the Director overlooked the published articles citing the Petitioner and his research. Six of the 12 articles name the Petitioner in their bodies and explain how he used cutting-edge, numeric computations to disprove a long-held belief regarding singlet fission. Letters from other scientists state that this discovery could lead to cheaper and more efficient solar energy technology. Thus, contrary to the Director's decision and consistent with 8 C.F.R. § 204.5(h)(3)(iii), we find that a preponderance of the evidence demonstrates the Petitioner's original, scientific contributions of major significance.

Nevertheless, the Petitioner's contributions do not appear to meet the criterion because they are not "in the field [of extraordinary ability]." *See* 8 C.F.R. § 204.5(h)(3)(v). To qualify for the EB-1

category, a noncitizen 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. In his most recent jobs, the Petitioner has worked in the AI/ML field. He also stated his intent to continue working in the United States in that field, and he himself identifies his area of extraordinary ability as AI/ML. Thus, for purposes of adjudicating this petition, his applicable field of extraordinary ability is AI/ML.

The Petitioner's original, scientific contributions, however, do not mention AI/ML. Rather, the research articles involve singlet fission in solar cells. Thus, the Petitioner's research appears to relate to photovoltaic cells or computational physics. He has not explained whether or how his research relates to AI/ML, his field of extraordinary ability. Further, although most of the letters from the other scientists mention the Petitioner's more recent work in AI/ML, the letters focus on his work in singlet fission and only briefly mention his activities in his field of extraordinary ability.

Several federal courts have ruled that EB-1 petitioners must demonstrate extraordinary ability in the fields in which they would work, distinguishing *playing* a sport from *coaching* that sport. *See, e.g., Mussarova v. Garland*, 562 F. Supp. 3d 837, 844-45 (C.D. Cal. 2022); *Integrity Gymnastics & Pure Power Cheerleading, LLC v. USCIS*, 131 F. Supp. 3d 721, 731 (S.D. Ohio 2015); *Lee v. Ziglar*, 237 F. Supp. 2d 914, 918 (N.D. Ill. 2002). Similarly, the Petitioner's work in photovoltaic cells or computational physics is not in AI/ML and does not even appear connected to his field of extraordinary ability.

Because our proposed denial ground under this criterion differs from the Director's, we will withdraw the Director's findings.

C. Authorship of Scholarly Articles

Similar to the two evidentiary criteria we have just reviewed, "evidence of the alien's authorship of scholarly articles" must also be "in the field [of extraordinary ability]." 8 C.F.R. § 204.5(h)(3)(vi). The Director found that the Petitioner's five published research articles meet this criterion. But, as previously discussed, the Petitioner has not demonstrated that his articles relate to AI/ML, his field of extraordinary ability. Thus, we will also withdraw the Director's findings under this criterion.

The Petitioner did not receive prior notice of our proposed denial grounds under the evidentiary criteria at 8 C.F.R. § 204.5(v) or (vi). Nor did he receive an opportunity to rebut our reasoning. We will therefore remand the matter.

On remand, the Director should notify the Petitioner of our proposed denial grounds under the two evidentiary criteria. The notice should explain that he does not appear to have submitted published materials or evidence of original, scientific contributions in AI/ML, his field of extraordinary ability.

If supported by the record, the Director may also inform the Petitioner of any other potential denial grounds. The Director, however, must afford him a reasonable opportunity to respond to all issues raised on remand. Upon receipt of a timely response, the Director should review the entire record and enter a new decision.

III. CONCLUSION

As the Director found, the Petitioner has not submitted published materials that substantially discuss him and his work. Also, because his evidence appears to fall outside his field of extraordinary ability, he has not provided proof of original contributions of major significance or authorship of scholarly articles.

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