



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF A-C- LLC

DATE: FEB. 16, 2017

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, an electronic commerce business, seeks to classify the Beneficiary as an outstanding researcher. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(B), 8 U.S.C. § 1153(b)(1)(B). This classification makes immigrant visas available to foreign nationals who can demonstrate international recognition as outstanding in their academic field.

The Director, Nebraska Service Center, denied the petition, concluding that the Beneficiary was not recognized as outstanding in his particular academic field of speech recognition. The matter is now before us on appeal. In its appeal, the Petitioner relies on several of our non-precedent decisions, and maintains that the Director incorrectly analyzed the citations of the Beneficiary's work and his peer review experience.

Upon *de novo* review, we will dismiss the appeal.

I. LAW AND EVIDENTIARY FRAMEWORK

The statute requires that beneficiaries under this immigrant visa classification have at least several years of experience, enjoy international recognition as outstanding in their particular field, and be coming to the United States to work in a qualifying position related to that field. Specifically, section 203(b)(1)(B)(i) of the Act provides that a foreign national is an outstanding professor or researcher if:

- (i) the alien is recognized internationally as outstanding in a specific academic area,
- (ii) the alien has at least 3 years of experience in teaching or research in the academic area, and
- (iii) the alien seeks to enter the United States --
 - (I) for a tenured position (or tenure-track position) within a university or institution of higher education to teach in the academic area,

- (II) for a comparable position with a university or institution of higher education to conduct research in the area, or
- (III) for a comparable position to conduct research in the area with a department, division, or institute of a private employer, if the department, division, or institute employs at least 3 persons full-time in research activities and has achieved documented accomplishments in an academic field.

The regulation at 8 C.F.R. § 204.5(i)(3)(i) contains an evidentiary framework that must be met to establish eligibility for preference status as an outstanding professor or researcher. Six evidentiary criteria are set forth at 8 C.F.R. §§ 204.5(i)(3)(A)-(F), and encompass things like prominent awards; judging others' work; membership in associations which require a record of outstanding achievement; scholarly publications in the beneficiary's field; and recognition in publications by others. As an initial step, the petitioner must provide satisfactory evidence that meets at least two of those six criteria.

This, however, is only the first step, and the successful submission of evidence meeting at least two criteria does not, in and of itself, establish eligibility for this classification. *Cf. Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a similar two-part framework relating to aliens of "extraordinary ability" where the evidence is first counted and then, if satisfying the required number of criteria, considered in the context of a final merits determination). When a petitioner submits sufficient evidence at the first step, we will then go on to determine whether the evidence in its totality shows that the beneficiary is internationally recognized as outstanding in his or her academic field. It is important to note that it is not the quantity of the evidence, but also its quality, that will allow a petitioner to meet its burden of establishing a beneficiary's qualifications as an outstanding professor or researcher. *See Matter of Chawathe*, 24 I&N Dec. 369, 376 (AAO 2010) (it is necessary to examine "each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence to determine whether the fact to be proven is probably true").

Finally, the regulation at 8 C.F.R. § 204.5(i)(3)(ii) provides that a petition for an outstanding professor or researcher must be accompanied by evidence that the foreign national has at least 3 years of experience in teaching and/or research in the academic field.

II. PROCEDURAL HISTORY AND EVIDENCE OF RECORD

The Petitioner filed the Form I-140 immigrant petition expressing its intent to permanently employ the Beneficiary as an applied scientist II. The petition is based on the Beneficiary's expertise in speech recognition and the privacy issues that arise in this area. The Director concluded that the Beneficiary's activities as a judge of the work of others in the academic field and his original published research met the judging, original contributions, and scholarly articles criteria at 8 C.F.R. §§ 204.5(i)(3)(D), (E), and (F). However, he denied the petition because the evidence in the

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aggregate did not show that the beneficiary enjoyed international recognition as outstanding in the academic field.

On appeal, the Petitioner provides a brief and several of our non-precedent decisions. We issued a request for evidence (RFE) to give the Petitioner an opportunity to provide additional evidence that the Beneficiary is internationally recognized as outstanding. Additionally, while not addressed by the Director, we also asked for required initial evidence relating to the proposed employment and the Beneficiary's 3 years of experience in teaching or research in the academic area.¹ The Petitioner did not respond to our RFE, and accordingly, we will now make a determination based on the record. See 8 C.F.R. § 103.2(a)(13).

III. ANALYSIS

We have reviewed all of the evidence of record, including any items not specifically discussed, and find that it supports the Director's conclusion that the Beneficiary has judged the work of others, made original contributions, and authored scholarly articles. Documentation, including copies of the Beneficiary's articles, citation data, articles that cite to his research, reference letters, and other items relating to the significance of these exhibits, verifies that the Beneficiary has published research articles, served as a committee member for a scientific conference, and reviewed manuscripts for journals and scientific conferences.

A. Internationally Recognized as Outstanding

The Beneficiary has reviewed manuscripts for [REDACTED] in 2014 and 2015, two [REDACTED] and the [REDACTED]

The Director concluded that peer review was routine in the sciences, and that participating as an anonymous reviewer of manuscripts was less probative of international recognition than serving as a credited editor.

On appeal, the Petitioner notes that the journals and conferences for which the Beneficiary reviewed manuscripts are highly rated, and maintains that only top researchers are asked to serve in this role. We acknowledge that the Beneficiary has performed such services for two journals and multiple conferences and the record establishes that the above conferences are large distinguished events. While a favorable factor, we note that a large conference with numerous submissions necessarily requires a sufficiently large enough number of reviewers to evaluate the manuscripts. The record does not support a finding that the reviewers of these conferences are typically internationally recognized. [REDACTED] director of the [REDACTED] at the [REDACTED] and technical chair of [REDACTED] 2014, states that the

¹ We conduct appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

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conference “only invites individuals who are well-regarded researchers in their field to review submitted papers and facilitate accept/reject decisions, to uphold the quality of the conference.” While journals and conferences rely on those with expertise to assure the value of the articles accepted for publication or presentation, the record does not demonstrate that serving as a reviewer is commensurate with international recognition as outstanding.

The remaining evidence consists of reference letters, the Beneficiary’s articles, and information relating to citations. While indicative of a productive researcher who has made original contributions, this material does not demonstrate the Beneficiary’s impact in the field at a level commensurate with being internationally recognized as outstanding.² The content of the letters and the citations do not support the contention that others have applied the Beneficiary’s results. We have considered all of the letters, a sampling of which we address below.

_____ a senior researcher at _____ describes the Beneficiary’s research on text-to-speech synthesis for the Tamil and Hindi languages. He explains that the Beneficiary implemented the unit selection algorithms, the key component of this design. The letter notes that the Beneficiary reported his work at a conference in India and that the impact “is worldwide.” _____ does not explain his conclusion. When reviewing the impact of a presentation, we must look at the application of the findings after dissemination.

The record contains letters from the Beneficiary’s Ph.D. advisor and a member of his dissertation committee discussing his doctoral research. _____ director of the _____ describes the Beneficiary’s focus “on audio features having low phonetic information for speaker diarization and speech/non-speech detection.” Specifically, the Beneficiary “proposed methods for capturing real-life audio for spontaneous social interaction analysis,” and “derived and demonstrated audio features that achieve state-of-the-art performances in speech processing tasks . . . while retaining only minimal phonetic information” to preserve privacy. _____ states that _____ applied this work, but provides no details. _____ director of the _____ at the _____ characterizes this research as “pioneering and groundbreaking,” helping “to define a new idea in the field of speech processing – that of privacy-preserving features.” _____ does not, however, identify independent research groups influenced by the Beneficiary’s findings or who are using his speech/non-speech algorithm.

While several authors attest to _____ application of the Beneficiary’s results, none of them affirm any firsthand knowledge of the company’s technology, and the record does not contain corroboration

² We note that the Director focused in his denial on a comparison between the citation rates of those he identified as being at the top of the field and the Beneficiary’s citation rate. Unlike the extraordinary ability classification at section 203(b)(1)(A) of the Act, which requires that the foreign national be within the small percentage at the top of the field, the statutory language for outstanding researchers does not imply the same level of comparison with others.

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from anyone at [REDACTED]. For example, [REDACTED] director of [REDACTED] states that the Beneficiary's research on privacy features "has found application in a data collection project done by the [REDACTED] company [REDACTED] concludes that the Beneficiary's achievement in this area "is one of the earliest works in this new field, thereby paving the way for various practical applications of real-life audio collection." The future practical value of the Beneficiary's research, however, does not necessarily demonstrate that he is already internationally recognized as outstanding. As another example of the application of the Beneficiary's findings, [REDACTED] declares that the Beneficiary's reported results were "leveraged" in an article entitled "[REDACTED] While the Petitioner provided several examples of citing articles, it did not include this one.

Similarly, [REDACTED] a principal researcher at [REDACTED] also indicates that [REDACTED] "leveraged" the Beneficiary's research "to develop a scrambling approach to further ensure privacy without compromising task performances on smart phones." [REDACTED] does not further explain this application. In addition, he states that [REDACTED] "leveraged" the Beneficiary's research in an article. Once again, the examples of citations in the record do not include this article.

[REDACTED] a principal researcher with the [REDACTED] at [REDACTED] confirms that he briefly collaborated with the Beneficiary, and that the Beneficiary has "transformed the field." [REDACTED] explains that the Beneficiary's work with privacy sensitive methods for detecting speech "is of critical importance" because of the number of smart devices that respond to the human voice. According to this letter, his research "has applications in numerous personal assistant applications including [REDACTED] and [REDACTED] The only example [REDACTED] provides, however, of independent companies applying the Beneficiary's work is [REDACTED] offers no specifics about [REDACTED] use of the Beneficiary's findings.

Finally, [REDACTED] also describes how [REDACTED] from [REDACTED] in [REDACTED] Ireland, "utilized and cited" the Beneficiary's published research. The provided article indicates that [REDACTED] "presents an analysis of the discourse structure and spontaneous interactions at real-life multi-disciplinary medical team meetings." In a footnote, he notes that he cannot distribute the audio and video recordings due to the confidential and sensitive nature of the material. He then cites the Beneficiary's article when expressing his hope to obtain approval to gather and distribute privacy-preserving audio features to extend the range of possible content-free studies based on the data. [REDACTED] cited but did not utilize the Beneficiary's work as suggested by [REDACTED] rather, he cited it as a possible means to gather, distribute, and analyze a greater range of data in the future.

³ In our RFE, we specifically provided the Petitioner an opportunity to submit letters from individuals at [REDACTED] explaining the extent of their reliance on the Beneficiary's studies, or any other evidence establishing eligibility in this regard. The Petitioner did not respond to our RFE.

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Without providing specific, corroborated examples of how the Beneficiary's work is being applied, the authors of the letters considered above conclude that the Beneficiary has been influential in his field. Merely repeating the language of the statute or regulations does not satisfy the Petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). Similarly, U.S. Citizenship Immigration Services (USCIS) need not accept primarily conclusory statements. *1756, Inc. v. The U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.C. Dist. 1990).

Citations can corroborate that a beneficiary is internationally recognized as outstanding. Both the Petitioner and the Director focus on the total number of citations. The Petitioner presented average citation rates in the field of computer science, as well as the citation records for others in the field that show fewer overall citations. The Director indicated that independent research reveals others in the field with far more citations. On appeal, the Petitioner relies on several non-precedent decisions from this office, both favorable and adverse, as support for its position that the Beneficiary's citations warrant approval of the petition. These prior AAO decisions were not published as precedents and do not bind USCIS officers in the administration of the Act. *See* 8 C.F.R. § 103.3(c). We conduct case-by-case adjudications based upon the given record of proceeding. While citations can be a factor in determining a beneficiary's international recognition, they are not dispositive. Notably, while the favorable decisions the Petitioner offers refer to the amount of citations, they also indicate that at least some of the authors "apply and build upon" the Beneficiary's work.

The citing article in the record showing the most reliance on the Beneficiary's work is by [REDACTED] and [REDACTED] entitled "[REDACTED]"

[REDACTED] In this article, the authors use an all-pole model from a different researcher and then cite the Beneficiary's research for the statement that a "good choice for the order is around 8 to 12." The remaining citation examples in the record, however, do not reflect significant reliance on the Beneficiary's findings. For example, [REDACTED] and [REDACTED] in [REDACTED] cite the Beneficiary's article and one other for the proposition that "a number of researchers are investigating how easy it is to link an individual across online social networks." Also, [REDACTED] by [REDACTED] and [REDACTED] cites the Beneficiary's article and another one for the notion that there is "a growing line of work exploring 'privacy-sensitive' data."

Considering all of the evidence in the aggregate, the Beneficiary is an experienced and knowledgeable researcher working in the area of speech recognition and privacy sensitivity, a topic with increased importance in light of recent advances in voice interactive technology. The Beneficiary's participation in the widespread peer-review process, authorship of articles, presentation of his work at conferences, and citations of his work by others are commensurate with a respected and successful researcher in an area with significant growth potential. The Beneficiary's recognition in the field, however, does not rise to the level of international recognition as outstanding in the academic field.

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B. Offer of Employment

While not addressed by the Director, the record does not contain the required initial evidence relating to the proposed employment. While we acknowledge that the Beneficiary is already working for the Petitioner and the record includes a cover letter addressed to USCIS supporting the petition, the statute and regulation expressly require a letter offering the Beneficiary employment as part of the initial required evidence. As the Petitioner in this matter is not a university or institution of higher learning, the letter must tender the Beneficiary "a permanent research position" in his academic field. *See* 8 C.F.R. § 204.5(i)(3)(iii). We note that the Petitioner currently employs the Beneficiary under the terms of a nonimmigrant visa, which does not require that the job be permanent. A letter addressed to USCIS listing the job responsibilities is not a letter proposing to employ the Beneficiary. As noted, the Petitioner did not respond to our RFE or provide its past job offer letter or a new one. Thus, the record lacks the initial evidence requirements. The Petitioner has not established by a preponderance of the evidence that it is extending a permanent research position to the Beneficiary.

C. Three Years of Experience

As a final issue, the record does not resolve whether the Beneficiary has the necessary experience. Pursuant to the regulation, a petition for an outstanding professor or researcher must be accompanied by evidence that the foreign national has at least 3 years of experience in teaching and/or research in the academic field. In addition, experience in teaching or research while working on an advanced degree will only be acceptable if the individual has acquired the degree, and if the teaching duties were such that he or she had full responsibility for the class taught or if the research conducted toward the degree has been recognized within the academic field as outstanding. Although the Beneficiary's curriculum vitae notes more than 3 years of experience, the Petitioner did not document that experience with letters from his employers. *See* 8 C.F.R. §§ 204.5(g)(1), (i)(3)(ii).

The Petitioner filed the immigrant petition in December 2015. According to the Beneficiary's curriculum vitae, he has worked for the Petitioner since June 2013, and as a postdoctoral researcher for the [REDACTED] in [REDACTED] California, from 2012 to June 2013. While the Petitioner confirms the Beneficiary's employment, it does not provide the dates. The only letter relating to [REDACTED] is from [REDACTED] and appears on [REDACTED] letterhead. [REDACTED] indicates that he is an external fellow at [REDACTED] where he leads a joint project with [REDACTED]. He does not, however, specifically verify the Beneficiary's employment there, including the dates.

Although requested in our RFE, the Petitioner did not provide the required initial evidence of the Beneficiary's 3 years of postdoctoral employment. Accordingly, the Petitioner has not shown that the Beneficiary has the necessary experience for the classification sought.

IV. CONCLUSION

The Petitioner has not demonstrated that the Beneficiary is internationally recognized as outstanding in his academic field, and did not supply the required initial evidence relating to its offer of employment and the Beneficiary's experience. For these reasons, the Beneficiary is ineligible for classification as an outstanding professor or researcher under section 203(b)(1)(B) of the Act.

ORDER: The appeal is dismissed.

Cite as *Matter of A-C- LLC*, ID# 10113 (AAO Feb. 16, 2017)