



U.S. Citizenship
and Immigration
Services

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

MATTER OF G-

DATE: MAR. 20. 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, an automobile manufacturer, seeks to classify the Beneficiary as an outstanding researcher in the field of robotics. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(B), 8 U.S.C. § 1153(b)(1)(B). This first preference classification makes immigrant visas available to foreign nationals who are internationally recognized as outstanding in their academic field.

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish, as required, that the Beneficiary is internationally recognized as outstanding in the field of robotics.

On appeal, the Petitioner submits additional evidence and asserts that the Director did not correctly evaluate the submitted evidence, and that the record establishes the Beneficiary is an internationally recognized researcher.

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

I. LAW

The statute requires that beneficiaries under this immigrant visa classification should stand apart in their academic area based on international recognition. 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 [for a qualifying position with a university, institution of higher education, or certain private employers].

To establish a professor or researcher's eligibility, a petitioner must provide initial qualifying documentation that meets at least two of six categories of specific objective evidence. In addition,

the evidence must demonstrate that the beneficiary is recognized internationally within the academic field as outstanding. 8 C.F.R. § 204.5(i)(3)(i).

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 evidence that the foreign national has at least three years of experience in teaching and/or research in the academic field.

II. ANALYSIS

The Beneficiary is employed by the Petitioner as a software engineer, with a focus on automated driving systems. The Director found that he met the requirements of three of the six evidentiary criteria, those pertaining to the authorship of scholarly articles, original contributions to his field, and judging the work of others in the field. However, upon review of the totality of the evidence in the record, he found that it did not establish the Beneficiary is internationally recognized as outstanding in the field of robotics.

The Petitioner asserts on appeal, as it did in response to the Director's notice of intent to deny, that the evidence of citations to the Beneficiary's published articles in scientific journals and the proceedings of conferences should be evaluated under the criterion at 8 C.F.R. § 204.5(i)(3)(i)(C) as published materials in professional publications written by others about the alien's work. After review of this evidence, we agree with the Director that this material does not satisfy the claimed criterion and is more properly considered as evidence of the Beneficiary's contribution to the field. These articles are not about his work, but either report the work of the authors or provide a broad review of research in a specific area. Articles that are not about the Beneficiary's work do not meet the regulatory criterion at 8 C.F.R. § 204.5(i)(3)(i)(C). *See Adjudicator's Field Manual (AFM)* Chapter 22.2(i) (stating that "Articles that cite the alien's work as one of multiple footnotes or endnotes are not generally "about" the alien's work.) Further, since the Petitioner has already established that the Beneficiary meets at least the requisite two evidentiary criteria, we will consider this evidence together with the remainder of the record to determine whether it demonstrates that he has been recognized as standing above his peers in the field of robotics at the international level.

On appeal, the Petitioner contends that the Director's qualitative analysis of the record as a whole was improper. It argues that the Director's decision failed to consider, or dismissed, evidence in the record regarding the Beneficiary's publications and their reception within his field, concluding that this serves as an example of the "inherent subjectivity and ambiguity" of the final merits analysis.¹ It goes on to assert that this type of analysis in the outstanding professor and researcher context in general "is so broad, vague, and ill-defined as to run afoul of the elementary protections of Due Process of Law."

¹ The term final merits analysis comes from *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.

We note that USCIS administers immigrant visa petitions, including those for outstanding professors and researchers, pursuant to statutory and regulatory authorities, and the Petitioner does not argue that a specific provision of the statute or regulations is unconstitutional. To the extent that the Petitioner's due process argument is grounded in the constitutionality of the statute and pertinent regulations, we lack jurisdiction to rule on the constitutionality of laws enacted by Congress or of regulations promulgated by DHS. See, e.g., *Matter of Fuentes-Campos*, 21 I&N Dec. 905, 912 (BIA 1997); *Matter of C-*, 20 I&N Dec. 529, 532 (BIA 1992). Therefore, we will consider the Petitioner's due process concerns as they relate to whether USCIS complied with the applicable statute and regulations.

It is important to note that the controlling purpose of the regulation at 8 C.F.R. § 204.5(i)(3)(i) is to establish a beneficiary's international recognition, and any evidence submitted to meet these criteria must therefore be to some extent indicative of international recognition. More specifically, outstanding professors and researchers should stand apart in the academic community through eminence and distinction based on international recognition. The regulation at issue provides criteria to be used in evaluating whether a professor or researcher is deemed outstanding. *Employment-Based Immigrants*, 56 Fed.Reg. 30703, 30705 (July 5, 1991). Therefore, to the extent that the Director first determined that the evidence satisfied the plain language requirements of specific evidentiary criteria, and then evaluated whether that evidence, as part of the entirety of the record, was sufficient to demonstrate the Beneficiary's recognition as outstanding at the international level, his analysis was in keeping with the statute, regulations, and policy pertaining to the requested immigrant visa classification.²

The Petitioner next asserts that the evidence of the Beneficiary's service as a peer reviewer for respected journals and conferences in his field demonstrates his international recognition. It argues that the journals for which the Beneficiary has conducted reviews accept peer reviewers on an "invitation-only" basis, and that they "employ uncommonly stringent minimum quality standards" in selecting reviewers. As stated in the Director's decision, we acknowledge that peer reviewers must possess expertise on the subject matter of the manuscripts and papers they review in order to uphold the integrity of the journals and conferences for which they perform this service. This is evident in the statement that is highlighted by the Petitioner in the emails sent to the Beneficiary from the journal *IEEE Transactions on Robotics* (T-RO), requesting him to review papers submitted for publication: "As you know, peer review is essential to the functioning and vitality of our research community, and T-RO's position as a leading robotics research journal depends critically on its reviewers."

However, the record does not support the Petitioner's assertions that the Beneficiary's selection as a reviewer demonstrates he is internationally recognized as outstanding. For example, the Petitioner

² USCIS has previously confirmed the applicability of this two-part adjudicative approach in the context of outstanding professors and researchers. USCIS Policy Memorandum, *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*, PM-602-0005.1 (Dec. 22, 2010).

includes a partial list of reviewers for T-RO in 2015, along with the address to the website from which it was taken. The complete list, as with those for 2016 and 2017, includes hundreds of names, and therefore does not serve to distinguish the Beneficiary from those many other experts providing the same service. Nor does the record include sufficient evidence regarding this pool of reviewers or T-RO's selection process to corroborate the Petitioner's claims regarding the caliber of expertise and recognition reflected by the Beneficiary's review work for this journal.

Further, the evidence regarding the peer review process for the scientific publisher Elsevier, under the heading "Do you want to be a Reviewer?" indicates that reviewers are typically invited, but may also contact a journal editor to volunteer their services. In addition, while the evidence does include evidence of the Beneficiary's review activity as a review editor for *Frontiers in Robotics and AI*, it does not indicate that this position has the same authority regarding publication of an article as that described in the materials about editors for T-RO, and thus serves as evidence of the recognition inherent in the granting of such responsibility. The Petitioner states that, as a review editor for *Frontiers in Robotics and AI*, the Beneficiary is a member of the editorial board for this journal and is listed as such on its website. We note that the journal's website confirms that the Beneficiary is one of 1,131 listed editors, which includes 786 review editors. The Petitioner has not shown that the Beneficiary stands out from the individuals performing the same function for this journal, or that his status as a review editor has otherwise resulted in, or is reflective of, recognition at an international level for being outstanding in his field.

The record also includes evidence relating to the Beneficiary's contributions to, and impact upon, the field of robotics. This documentation includes his publications in scientific journals and presentations at conferences, patent applications and registrations, citations to his work in the published research of other researchers, and letters from experts in his field. In its brief, the Petitioner first addresses the prestige of the journals in which the Beneficiary has published his work, and refers to rankings of these journals by Google Scholar Journal Metrics, impact factor and other indicators. However, in evaluating whether the Beneficiary's work has been internationally recognized as outstanding, we will not assume that every article published in a prestigious journal has received a high level of acceptance, positive response, and application by others in the field since its dissemination.

As for the evidence of recognition of the Beneficiary's work, the Petitioner submits evidence that other researchers had cited to his publications on dozens of occasions at the time of filing, and notes that those citations are from researchers around the globe. It also notes that in one of those citing papers, the Beneficiary's work is referred to as "pioneering" and providing "a helpful reference." While this evidence indicates that the authors of this paper built upon the Beneficiary's work and considered it to stand out from previous work in the field, the overall record of citations to his work does not sufficiently establish that it has been internationally recognized as outstanding. The small number of additional examples of citing articles in the record include neutral comments which briefly describe the Petitioner's work. Further, the record does not include comparative data or other indicators that indicates that the frequency of citations to the Beneficiary's work serves to demonstrate widespread recognition of his work at a level which stands out from the work of his

peers. Neither the quality nor quantity of citations to his work has been demonstrated to be an indicator of the Beneficiary's international recognition as outstanding in the field of robotics.

Regarding the Beneficiary's patent documentation, the evidence shows that he is listed as an inventor on several patent applications, including two which are licensed to the Petitioner. A letter from [REDACTED] who leads the Petitioner's Active Chassis Controls and Calibration department, indicates that the company is actively working to "productionize" the technologies included in these patents, which he states "enhance the performance of vehicle dynamics and stability control" and "would result in significant cost savings" for the Petitioner since they rely on existing hardware and sensors. However, while [REDACTED] states that the Beneficiary's solution represents "the most promising" that he has evaluated, the letter does not establish that the Beneficiary's potential improvement to the Petitioner's product stands out from performance and cost perspectives from that developed by industry rivals and others, or that they have already been recognized as outstanding in the multinational automotive industry.

Two additional letters confirm the robotics research conducted by the Beneficiary at institutions in Korea, resulting in patent applications and publications in scientific journals and at conferences. The letters indicate that the patent for the robotic grasper developed by the Beneficiary was licensed to a Korean intellectual property investment company, and that his patented system for control of multiple robots was later cited by a patent developed by the [REDACTED]. But the record does not include evidence to support these statements regarding third party entities, nor does it provide details on how they utilized the Beneficiary's work.

Further evidence relating to the Beneficiary's contributions and recognition in the field of robotics consists of letters from experts that he has previously worked for or collaborated with. While these letters include useful information regarding the nature of the Beneficiary's role on various projects, they offer limited probative value in demonstrating recognition of his work beyond his immediate circle of colleagues. [REDACTED] Associate Professor at the [REDACTED] at [REDACTED] describes the Beneficiary's work while at the school, and notes that it resulted in two patent applications and several papers published in international journals. [REDACTED] states that the Beneficiary's research contributions have "had an immediate and profound impact on robotics engineering today, and have since served as the scientific foundation that has underpinned several other notable technology breakthroughs in the field." However, he does not identify or provide details regarding these other breakthroughs, or specify how the Beneficiary's research had a profound impact on the field of robotics as claimed. [REDACTED] Manager of Sales and Delivery at [REDACTED] confirms in her letter that during the Beneficiary's one-year employment with the company, he focused on development of novel algorithms in support of vehicle active safety systems, which included work towards one of the patent applications licensed to the Petitioner that is mentioned above. This letter verifies the research work conducted by the Beneficiary in vehicle safety and autonomous systems, but does not establish that his work has garnered international recognition as outstanding in the field.

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Accordingly, after consideration of the totality of the evidence, we find that it does not sufficiently demonstrate recognition of the Beneficiary as outstanding in the field of robotics.

III. CONCLUSION

The Petitioner submitted evidence which establishes that the Beneficiary meets the initial requirements of at least two of the requisite evidentiary criteria. Upon review of the entirety of the record, however, we find that it does not establish that the Beneficiary is internationally recognized as an outstanding researcher in the field of robotics.

ORDER: The appeal is dismissed.

Cite as *Matter of G-*, ID# 1965298 (AAO Mar. 20, 2019)