In Re: 30518950   Date: MAR. 22, 2024

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Outstanding Professors/Researchers)

The Petitioner seeks to classify the Beneficiary as an outstanding professor or researcher. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(B), 8 U.S.C. § 1153(b)(1)(B). The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner did not establish, as required, that the Beneficiary is internationally recognized as outstanding in his academic field. The matter is now before us on appeal.

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)(B) of the Act provides that an individual is an outstanding professor or researcher if the person is recognized internationally as outstanding in a specific academic area, has at least three years of experience in teaching or research in the academic area, and seeks to enter the United States for a qualifying position with a university, an 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 set forth at 8 C.F.R § 204.5(i)(3)(i)(A)-(F). 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. When a petitioner submits sufficient evidence at the first step, we will then conduct a final merits determination to decide whether the evidence in its totality shows that the beneficiary is internationally recognized as outstanding in their academic field.[1] 8 C.F.R. § 204.5(i)(3)(i);

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[1] "Academic field" means a body of specialized knowledge offered for study at an accredited United States university or institution of higher education. 8 C.F.R § 204.5(i)(2). By regulatory definition, a body of specialized knowledge is larger than a very small area of specialization in which only a single course is taught or that is the subject of a very specialized dissertation. For example, it would be acceptable to conclude that a beneficiary is an outstanding professor or researcher

Viswanadha v. Mayorkas, 660 F. Supp. 3d 759, 770-72 (N.D. Ind. 2023) (concluding that USCIS' two-step analysis is consistent with the regulation at 8 C.F.R. § 204.5(i)(3)); *see also Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (describing the two-step process).[2]

II. ANALYSIS

The Beneficiary earned both a Master of Science degree (2014) and a Ph.D. (2015) in Computer Engineering in from [   ] He served as a postdoctoral associate at [   ] (2016), a senior research engineer at [   ] (2016-2019), and a software engineer at [   ] (2019-2021). The Petitioner has employed the Beneficiary as a software engineer since 2021.

A. Evidentiary Criteria

The Director determined that the Beneficiary met at least two of the evidentiary criteria at 8 C.F.R § 204.5(i)(3)(i)(A)-(F), thus satisfying the initial evidence requirement, but that the totality of the record did not establish the requisite international recognition in his field. Upon review, we agree with the Director that the evidence demonstrates the Beneficiary's service as a judge of the work of others, original scientific or scholarly research contributions to the academic field, and authorship of scholarly articles. As he therefore meets the initial evidence requirements, we will consider all the evidence of record when conducting the final merits determination.

B. Final Merits Determination

In a final merits determination, we analyze a researcher's accomplishments and weigh the totality of the evidence to evaluate whether a petitioner has demonstrated, by a preponderance of the evidence,[3] that the beneficiary's achievements are sufficient to demonstrate that they have been internationally recognized as outstanding in the academic field. *See* section 203(b)(1)(B)(i) of the Act; 8 C.F.R. § 204.5(i)(3)(i). In this matter, we agree with the Director that the Petitioner has not shown the Beneficiary's eligibility.[4]

On appeal, the Petitioner submits a brief asserting that the Director "made numerous mistakes of fact and law in the decision which indicate the denial is arbitrary, capricious, an abuse of discretion, or

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in particle physics rather than physics in general, as long as it has been demonstrated that the claimed field is "a body of specialized knowledge offered for study at an accredited United States university or institution of higher education." *See* 6 *USCIS Policy Manual* F.3(B), https://www.uscis.gov/policy-manual.

[2] USCIS has confirmed the applicability of this two-step analysis to evaluate the evidence submitted with the petition to demonstrate an individual's eligibility for classification as an outstanding professor or researcher in their academic field. *See* 6 *USCIS Policy Manual, supra*, at F.3(B).

[3] A petitioner must establish that the beneficiary meets the eligibility requirements of the benefit sought by a preponderance of the evidence. *Matter of Chawathe*, 25 I& N Dec. at 375-76. In other words, a petitioner must show that what it claims is "more likely than not" or "probably" true. To determine whether a petitioner has met its burden under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Id*. at 376; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989).

[4] In the final merits analysis, the Director's decision discussed the documentation relating to the Beneficiary's peer review activity, Institute of Electrical and Electronics Engineers (IEEE) membership, [   ] Fellowship, research contributions, co-authorship of a U.S. patent, published and presented work, citation evidence, and letters of support, and explained why that evidence, as part of the entirety of the record, was insufficient to demonstrate the Beneficiary's recognition as outstanding at the international level.

otherwise not in accordance with law." It argues that the Director did not properly evaluate evidence in the record, and that this evidence establishes that the Beneficiary qualifies under this immigrant visa classification's high standards. The Petitioner further contends that the Director did not properly analyze the Beneficiary's published and presented work, research contributions, citation evidence, co-authorship of a U.S. patent, "Senior" IEEE membership, letters of support, and peer review service.

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. Therefore, to the extent that the Director first determined that the evidence satisfied the 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 USCIS policy pertaining to the requested immigrant visa classification.

The Petitioner provided evidence indicating that the Beneficiary received a ☐
Fellowship in 2016. The record includes information from the ☐ announcing its 11 fellowship recipients for 2016, including the Beneficiary. The Petitioner, however, has not shown that this mentored fellowship at his alma mater (intended for early-career researchers) demonstrates the Beneficiary's recognition as outstanding at the international level in his field.[5]

In addition, the Petitioner submitted documentation showing that the Beneficiary is a "Senior Member" of the IEEE, as well as the requirements for that membership grade. These requirements state:

> Senior member is the highest grade for which IEEE members can apply. IEEE members can self-nominate, or be nominated, for Senior Member grade.
>
> To be eligible for application or nomination, candidates must:
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> - Be engineers, scientists, educators, technical executives, or originators in IEEE-designated fields
> - Have experience reflecting professional maturity
> - Have been in professional practice for at least ten years (with some credit for certain degrees)
> - Show significant performance over a period of at least five of their years in professional practice

The Petitioner, however, has not demonstrated that requirements such as "experience reflecting professional maturity" or "significant performance . . . in professional practice" rise to the level of "outstanding" achievement in the Beneficiary's academic field.[6] The record therefore does not

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[5] Further, we agree with the Director that the Petitioner has not shown the Beneficiary's UF fellowship rises to the level of "major prizes or awards for outstanding achievement in the academic field." *See* 8 C.F.R § 204.5(i)(3)(i)(A).

[6] While "[t]he grade of Senior member is the highest for which application may be made," it is not the IEEE's highest level of membership. According to the IEEE, [t]he grade of Fellow recognizes unusual distinction in the profession and is

indicate that the Beneficiary's IEEE Senior membership requires outstanding achievement or signifies international recognition in his academic field.[7]

As it pertains to the Beneficiary's participation as a judge of the work of others, the Petitioner submitted documentation indicating that he has peer reviewed four papers for the Association for Computing Machinery Multimedia (ACMMM) (2022) conference and three papers for *Knowledge and Information Systems Journal* (*KISJ*) (2016-2018).[8] In addition, the Petitioner provided emails asking him to review two papers for the International Conference on Pattern Recognition (ICPR) in 2016 and one paper for ICPR 2022, but the Petitioner has not shown that the Beneficiary completed these three ICPR reviews.

In response to the Director's notice of intent to deny (NOID), the Petitioner provided "Google Scholar Metrics" for "Top publications" in "Engineering and Computer Science." *KISJ* does not appear on this list of 20 publications. The Petitioner also presented a list of 100 "Best Computer Science Conferences" compiled by Research.com. AACMMM is ranked 23rd and ICPR is not listed among the top 100. While the Petitioner states on appeal that "[t]he impact factor of the ICPR is 4.10, the ACMMM is ranked A* as a flagship conference that is 'leading' in its area and has a historical acceptance rate for papers of 25%, and *KISJ* has a 5-year impact factor of 3.3," the Petitioner has not demonstrated that the aforementioned impact factors and rankings render individuals who provide peer review services for ACMMM, *KISJ*, and ICPR as internationally recognized as outstanding in their academic field.[9]

An evaluation of the significance of the Beneficiary's judging experience is appropriate to determine if such evidence is indicative of the outstanding achievement required for this classification.[10] In many scientific and academic fields, peer review is a routine part of the process through which articles are selected for publication or presentation at conferences. Participation in the peer review process does not automatically demonstrate that an individual is internationally recognized as outstanding in their academic field. Here, the Petitioner has not established that the level and frequency of the Beneficiary's participation as a reviewer of manuscripts is indicative of or consistent with being recognized internationally as outstanding in his academic area.[11]

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conferred only by invitation of the Board of Directors upon a person with an extraordinary record of accomplishments in any of IEEE's designated fields of interest." *See* https://www.ieee.org/membership/qualifications.html, accessed on March 20, 2024.

[7] Further, we agree with the Director that the Beneficiary's Senior IEEE membership does not meet the requirements of 8 C.F.R § 204.5(i)(3)(i)(B).

[8] These counts do not include subsequent revisions of the same paper.

[9] In response to the Director's notice of intent to deny (NOID), the Petitioner provided "Google Scholar Metrics" for "Top publications" in "Engineering and Computer Science." *KISJ* does not appear on this list of 20 publications. The Petitioner also presented a list of 100 "Best Computer Science Conferences" compiled by Research.com. AACMMM is ranked 23rd and ICPR is not listed in the top 100.

[10] *See* 6 *USCIS Policy Manual, supra*, at F.3(B)(1) (stating that a beneficiary's participation as a judge should be evaluated to determine whether it was indicative of the beneficiary being recognized internationally as outstanding in a specific academic area).

[11] For example, the record does not contain supporting evidence demonstrating that the journal and conferences that invited the Beneficiary to serve as a peer reviewer reserve their invitations for researchers who are recognized internationally as outstanding in the academic field.

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At issue here is the extent to which the Beneficiary's peer review activities have required, reflected, or resulted in him being recognized internationally as outstanding in his field. The Petitioner did not present documentation indicating the ACMMM, *KISJ*, and ICPR's specific requirements for selection of peer reviewers.[12] Therefore, although the record shows that the Beneficiary has reviewed four papers for ACMMM and three papers for *Knowledge and Information Systems Journal (KISJ)*,[13] this evidence does not demonstrate how his peer review activity compares to or differentiates him from his peers in the field. Similarly, the record does not show that the Beneficiary has received any international recognition for his service as a peer reviewer. Without this or other evidence differentiating him from others in his field,[14] the Petitioner has not established how the Beneficiary's peer review experience contributes to establishing that he is internationally recognized as outstanding in his academic field. 8 C.F.R. § 204.5(i)(3)(i).

With respect to the Beneficiary's standing and research contributions in his field, the record includes letters of support discussing his capabilities in the areas of computer vision and machine learning, as well as his research projects at [   ] and the Petitioner.[15] For example, regarding the Beneficiary's work at [ ] Dr. R-C-, a professor at [   ] stated that the Beneficiary "developed several elegant connections between wave functions and distance transforms and was even able to extend his findings to curves and line segments." Dr. R-C- further asserted that "[t]hese findings are unique and will gain tremendous recognition once quantum computing becomes mainstream," but he did not provide specific examples indicating that the Beneficiary's work has already had a meaningful impact in the academic field or has otherwise risen to the level of a contribution that is recognized internationally as outstanding.

Dr. A-Y-, another professor at [   ] indicated that the Beneficiary's work relating to "distance transforms in a Schrödinger wave space . . . is particularly important to the field because it bridges the gap between quantum computing and shape-matching algorithms currently in use today." Dr. A-Y- also stated that the Beneficiary's research "has the potential to drive significant progress in the field of computer vision," but the Petitioner has not demonstrated that his work has affected the field in a substantial way that signifies international recognition or outstanding achievement in the academic field. We recognize that research must add information to the pool of knowledge in some way in order to be accepted for publication, presentation, funding, or academic credit, but not every research finding that broadens knowledge in a particular field renders an individual's work as outstanding or internationally recognized in their academic area.

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[12] We note that reviewing manuscripts for journals or conferences that select their reviewers based on subject matter expertise does not provide strong support because possessing expertise in a given field is a considerably lower threshold than being recognized internationally within the academic field as outstanding.

[13] As discussed, although the Beneficiary was invited to review three papers for ICPR, the Petitioner did not present evidence showing that the Beneficiary actually completed any of the ICPR reviews.

[14] On appeal, the Petitioner takes issue with the Director's statement that the Petitioner did not offer "evidence that sets him apart from others in the field, such as evidence that he has completed a substantial number of review requests from prestigious journals relative to others in his field, served in editorial positions for distinguished journals or publications, or chaired technical committees for reputable conferences." The Petitioner contends that "[t]his is a mistake of law" and that "[t]here is nothing in law, regulation or policy" requiring a beneficiary to meet such requirements. The Director's decision, however, employed the term "such as" in referring to the aforementioned examples of evidence. The decision therefore did not impose any novel requirements contrary to law, regulation, or policy.

[15] While we discuss a sampling of the letters of support, we have reviewed and considered each one.

In addition, regarding the Beneficiary's work at [____] Dr. X-X-, Senior Software Manager at [____] [____] asserted that the Beneficiary contributed to his employer's autonomous driving operations. Dr. X-X- indicated that the Beneficiary's "algorithms have been deployed in our vehicles, contributing to the accuracy and reliability of our autonomous driving system," but he did not offer specific examples of how the Beneficiary's work has influenced the academic field outside his employer, has been widely implemented in the automotive industry, or has otherwise affected his field at a level commensurate with being internationally recognized as outstanding.

In the denying the petition, the Director's decision gave individualized consideration of the recommendation letters offered in support of the Beneficiary. We conclude that the Director's decision provided a sufficiently detailed analysis of these letters. In the appeal brief, the Petitioner points to many of the letters of support and contends that they show "how the Beneficiary's work is being used by other scholars or impacting the field." While we agree with the Petitioner that the Beneficiary's work has been used by others and has affected his field to some extent, the record does not show that his research findings have been utilized by other scholars or have influenced his academic field at a level that renders him internationally recognized as outstanding.

The Petitioner also argues that the letters of support show that the Beneficiary is internationally recognized as an outstanding researcher. The letters offered by the Petitioner, however, do not contain sufficient information and explanation, nor does the record include adequate corroborating evidence, to show that the Beneficiary and his work are viewed by the overall academic field, rather than by the references he selected, as substantially influential or otherwise recognized internationally as outstanding in his specific academic area.

The Petitioner further contends that the Beneficiary has published his work in "prestigious" and "highly-acclaimed" journals and conferences.[16] For example, the Beneficiary had one paper each published at the 2012 IEEE Conference on [____] and the 21st ACM SIGKDD [____] [____] [17] A high journal or conference ranking or impact factor is reflective of a publication's overall citation rate. It does not, however, show the influence of any particular author or demonstrate how an individual's research has affected the academic field. Further, the evidence in the record does not establish that publication in a top-ranked conference is sufficient to demonstrate that a beneficiary is recognized internationally as outstanding in their academic field. As authoring scholarly articles is often inherent to the work of professors and researchers, the citation history or other evidence of the influence of the Beneficiary's articles can be an indicator to determine the impact and recognition of his work in the field and whether his articles demonstrate that he is internationally recognized as outstanding in the academic field.[18]

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[16] The record indicates that the Beneficiary has coauthored seven conference papers and one journal article.
[17] The Petitioner provided "Google Scholar Metrics" for "Top publications" in "Engineering and Computer Science." IEEE [____] is ranked first and ACM SIGKDD [____] is not listed. The Petitioner also presented a list of 100 "Best Computer Science Conferences" compiled by Research.com. IEEE [____] is ranked first and ACM SIGKDD [____] is ranked 15th.
[18] See 6 USCIS Policy Manual, supra, at F.3(B)(1) (stating that a beneficiary's authorship of books or articles should be evaluated to determine whether they were indicative of the beneficiary being recognized internationally as outstanding in a specific academic area).

The Petitioner submitted the Beneficiary's Google Scholar profile showing that his eight research articles had received 77 cumulative citations. This Google Scholar information also indicated that the Beneficiary's five highest cited articles, entitled [   ] (2012), [   ] (2015), [   ] (2017), [   ] (2017), and [   ] (2014) each received 24, 21, 11, 10, and 8 citations, respectively. The Beneficiary's remaining three articles each received two citations or less. The Petitioner did not specify how many citations for each of the Beneficiary's individual articles were self-citations by him or his coauthors.

Without statistical evidence or other objective metrics comparing the number of citations received by the Beneficiary's articles with others in his field, the Petitioner has not demonstrated that the Beneficiary's work has been recognized at a level consistent with outstanding achievement in the academic field. The Petitioner has not shown that the number of citations received by the Beneficiary's published and presented work is sufficient to demonstrate a level of attention commensurate with him being recognized internationally in his field.[19] *See* section 203(b)(1)(B)(i) of the Act.

The record includes evidence showing that the Beneficiary presented his work at highly regarded scientific conferences such as the 2012 IEEE [   ] and the 21st ACM SIGKDD [   ] The Petitioner did not, for example, provide evidence from the organizers that invited the Beneficiary to participate indicating that they reserve their invitations for researchers who are recognized internationally as outstanding in the academic field. The Beneficiary's participation in the aforementioned reputable conferences demonstrates that his research findings were shared with others in his field, but without documenting broader impact of his presented research, such participation is not sufficient to show that his work is recognized internationally as outstanding in the academic field.[20]

The Petitioner also submitted evidence indicating that the Beneficiary was listed as a coinventor with four others on a U.S. patent, entitled [   ] While a patent recognizes the originality of an idea, it does not by itself demonstrate that the inventor has made a research contribution to the academic field that signifies international recognition or outstanding achievement. Rather, the significance of the innovation must be determined on a case-by-case basis. Here, the Petitioner has not shown in what ways the Beneficiary's invention has advanced the state of research in the academic field or demonstrated how his method has affected the field in a substantial way that signifies international recognition or outstanding achievement in the academic field. The Petitioner therefore has not established that the Beneficiary's U.S. patent shows that he that is internationally recognized as outstanding in his field.

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[19] We note, for example, that the Petitioner submitted the Google Scholar profile for Dr. A-Y- indicating that his work (over 160 articles) has received 95,155 cumulative citations and that 12 of Dr. A-Y-'s articles have been individually cited 1,000 times or more. Likewise, Dr. R-C- stated in his letter that his body of "research has been cited more than 92,000 times."

[20] For instance, the record indicates that Beneficiary's article at the 2012 IEEE [   ] has received 24 citations since its publication in 2012. The Petitioner has not shown that this level of citation over a period of more than a decade renders the Beneficiary or his work internationally recognized as outstanding in the academic field.

Although the evidence indicates that the Beneficiary is a skilled software engineering researcher in the areas of computer vision and machine learning, the Petitioner has not shown that he stands apart in the academic field through outstanding achievement and international recognition. After consideration of the totality of the evidence of the Beneficiary's work, including evidence of his published and presented research, citation record, peer review service, ☐ fellowship, IEEE membership, and U.S. patent, as well as the opinions of his colleagues in the field, we conclude that this documentation does not sufficiently establish that he has been internationally recognized as an outstanding researcher in the field.

III. CONCLUSION

The evidence demonstrates that the Beneficiary meets at least two of the evidentiary criteria at 8 C.F.R § 204.5(i)(3)(i)(A)-(F), and thus the initial evidence requirements for this classification. A review of the totality of the evidence, however, does not establish that the Beneficiary is internationally recognized as an outstanding professor or researcher in the academic field. 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.