U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37641690

Date: APR. 10, 2025

Appeal of Texas Service Center Decision

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

The Petitioner, a civil engineering consultant, seeks classification under the employment-based, first-preference (EB-1) immigrant visa category as an alien with "extraordinary ability." *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A).

The Director of the Texas Service Center denied the petition. The Director concluded that the Petitioner met two of ten initial evidentiary requirements for this category – one less than needed for a final merits determination. On appeal, the Petitioner contends that he also submitted evidence of his:

- Memberships in associations in his field requiring outstanding achievements of their members;
- Original contributions of major significance in the field; and
- Commandment of a high salary or significantly high remuneration relative to others in the field.

8 C.F.R. § 204.5(h)(3)(ii), (v), (ix).

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 he submitted evidence of original contributions of major significance to the field. We will therefore withdraw the Director's decision and remand the matter for a final merits determination and entry of a new decision consistent with the following analysis.

I. LAW

To qualify for this immigrant visa category, 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
- Would substantially benefit the country as a permanent resident.

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). Unless a petitioner received "a major, international recognized award," they must satisfy at least three of ten lesser evidentiary criteria. 8 C.F.R. § 204.5(h)(3).[1]

If a petitioner meets either evidentiary standard and the requirements at section 203(b)(1)(A)(ii), (iii) of the Act, USCIS must 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 extraordinary ability analysis "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 His Field

The record shows that the Petitioner, an Indian native and citizen, received a bachelor of technology degree in civil engineering from a university in his home country before earning master's and doctoral degrees in the same field from a U.S. school. At the time of this petition's filing, he had authored or co-authored 15 research papers and three technical reports. His research topics include: machine learning for object detection and classification; civil integration management (CIM) for transportation guides; and integration of unmanned aircraft systems into transportation operations. He had also reviewed and evaluated more than 50 research papers by his peers in the field.

Since 2022, the Petitioner has worked as an engineering consultant for a U.S. employer, leading applied research initiatives in business intelligence, data analytics, and machine learning related to civil engineering, transportation planning, and toll systems operations. He plans to continue his research activities in the United States, seeking affordable and sustainable solutions to transportation and civil infrastructure challenges.

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

The record supports the Director's findings that the Petitioner submitted evidence of his participation as a judge of others' work in his field and his authorship of scholarly articles. *See* 8 C.F.R. § 204.5(h)(3)(iv), (vi).

We will now review the Director's findings regarding the three evidentiary requirements that the Petitioner claims to have met. To satisfy these criteria, his evidence must objectively meet the

[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).

parameters of the applicable regulatory descriptions. *See generally* 6 *USCIS Policy Manual* F.2(B). "[N]either USCIS nor [the] AAO may unilaterally impose novel substantive or evidentiary requirements beyond those set forth." *Kazarian v. USCIS*, 596 F.3d 1115, 1121 (9th Cir. 2010).

B. Membership in Associations

This criterion requires "[d]ocumentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or field." 8 C.F.R. § 204.5(h)(3)(ii).

The Petitioner submitted copies of e-mail messages and a letter indicating his 2020 appointment as a member of a construction management committee for a research board seeking to anticipate and solve complex transportation-related challenges.

The Director found insufficient evidence that the research board requires outstanding achievements of its committee members. The Director faulted the Petitioner for omitting copies of the board's constitution or by-laws. The Director stated:

> The petitioner is required to submit objective documentary evidence to demonstrate that the association requires outstanding achievement as an essential condition for admission to membership such as the section of the association's constitution or bylaws, which discuss the criteria for membership for [his] level of membership in the association.

On appeal, the Petitioner submits a copy of the research board's member guide, which he contends shows the "prestige" of his appointment to the board's committee.[2] He also states that, as one of the 25 members of the construction management committee, he has "spearheaded" multiple "research needs statements," identifying emerging transportation technologies and developing guidelines for implementation across the United States.

A letter from a senior program officer of the research board discusses how committee members are chosen. The letter states: "Industry representatives [on the construction management committee] are typically highly experienced in engineering consulting or construction projects aligned with the committee's scope, while academic members have substantial research and training experience and have published in leading journals." The letter states that the Petitioner has "a well-rounded background, combining experience in both transportation research and engineering consulting. He proved his dedication and value as a Friend of the committee, which led to his nomination for full membership." The board's member guide states: "As a member, you have been recognized as an expert in your field, someone who can contribute valuable perspective on current issues facing the profession."

[2] We do not consider evidence on appeal if, before a director's decision, a petitioner received notice of the required documentation and an opportunity to provide it. *See Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988). But the Director's request for additional evidence (RFE) did not address evidence of the Petitioner's membership in associations. We will therefore consider the board's member guide on appeal.

In the context of this evidentiary criterion, the word "outstanding" means "marked by eminence and distinction." *Outstanding*, Merriam-Webster Online Dictionary, www.merriam-webster.com. The letter and the member guide indicate that committee members need experience in engineering consulting or construction projects, or research and training experience in the field combined with publications in leading journals. But both the letter and the guide fall short of establishing that the board requires committee members to have achievements marked by eminence and distinction. *See Nelson v. USCIS*, No. CV 21-10334-LTS, 2022 WL 20583561, at *5 (D. Mass. June 15, 2022) (stating that this criterion "demands membership in an organization that requires 'outstanding achievement' as judged by experts, and not merely membership in selective organizations in the field"); *see also* 6 *USCIS Policy Manual* F.2(B)(1), Criterion 2 (stating that a requirement for "years of experience in a particular field" indicates that an association may not demand outstanding achievements of its members).

Also, the record lacks evidence that the board's committee members are "judged by recognized national or international experts in their disciplines or field." *See* 8 C.F.R. § 204.5(h)(3)(ii). In the Petitioner's RFE response, counsel claimed that committee chairpersons invite candidates to become members and that the board's "Executive Committee" must then approve their memberships. But counsel's unsubstantiated assertions do not constitute evidence. *See, e.g., Matter of S-M-*, 22 I&N Dec. 49, 51 (BIA 1998) ("[S]tatements in a brief, motion, or Notice of Appeal are not evidence and thus are not entitled to any evidentiary weight.") The Petitioner has not identified the members of the board's executive committee or established them as experts in their fields.

For the foregoing reasons, the Petitioner has not submitted evidence of his membership in associations in the field requiring outstanding achievements of their members as judged by recognized national or international experts in their fields. We will therefore affirm the Director's finding regarding this evidentiary criterion.

C. 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).

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. If so, the Agency then determines whether the original contributions are of major significance to the field. *Id.*

The Petitioner submitted copies of publications that he authored or co-authored, evidence of citations to the articles, journal rankings and information, and letters from experts in the field and officials from state transportation agencies.

The Director acknowledged that the Petitioner made original contributions to his field. But the Director found insufficient evidence that the contributions had major significance in the field.

On appeal, the Petitioner contends that the number of citations to his research and his frequent selection as a peer reviewer of others' work demonstrate the major significance of his contributions to the field. He also cites letters that he says explain his research's notability.

The Petitioner submitted evidence that, at the time of the petition's filing, his published research had generated 248 citations, ranking him among the top 1% of most-cited authors in the field since 2018. *See* 8 C.F.R. § 103.2(b)(1) (requiring a petitioner to demonstrate eligibility "at the time of filing the benefit request"). The record also shows that a 2018 article he co-authored received 97 citations, placing it among the top 10% of civil engineering articles cited that year. The 2018 article also appeared in one of the highest ranked journals in the field.

The Petitioner notes that, under USCIS policy:

> published research that has provoked widespread commentary on its importance from others working in the field, and documentation that it has been highly cited relative to others' work in that field, may be probative of the significance of the person's contributions to the field of endeavor.

6 *USCIS Policy Manual* F.2(B)(1), Criterion 5.

Despite the evidence, however, the Director concluded that the Petitioner had not demonstrated that his original research had major significance in the field. The Director stated:

> While the petitioner submitted copies of articles and reviews . . . that cited [his] works and claimed that some researchers have used [his] works in "notable ways," there is no evidence distinguishing the petitioner's work from all the other works cited in the articles to show the major significance of [his] work.

We disagree. Letters from experts in the field describe the Petitioner's research and its importance to the field. *See* 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 also provide valuable context for evaluating the claimed original contributions of major significance.")

The Petitioner's 2018 article discusses his development of a machine-learning algorithm applying [redacted] to automate detection of building objects. Experts explained that his approach saves transportation agencies and researchers time and money in assessing infrastructure and correcting human errors in prior facility evaluations.

The Petitioner also developed a framework for state transportation agencies to evaluate and implement CIM - three-dimensional software enabling users to design engineering and construction projects in a streamlined design-to-construction workflow. His system incorporates cost-benefit analysis guidelines and an investment prioritization matrix, helping transportation agencies save time and money. One expert, a U.S. associate professor of construction engineering and project management, stated that transportation agencies and researchers use many of the Petitioner's methods. Another U.S. associate professor of construction management stated that the Petitioner's research led to the

nationwide development of guidelines for CIM technologies for digital asset data collection and processing.

Experts also cited the Petitioner's use of data analytics to establish guidelines on the use of unmanned aerial systems in the transportation field. The guidelines cover the systems' use in the areas of: traffic monitoring; emergency response and recovery; public outreach; bridge inspections; construction inspections; and surveying and mapping. The guide details technical, operational, and legal requirements. A U.S. assistant professor of civil construction and environmental engineering described the Petitioner's work as "a major safety upgrade for workers in infrastructure, as it allows for more efficient and accurate inspections of hazardous structures." *See Rubin v. Miller*, 478 F. Supp. 3d 499, 505-06 (S.D.N.Y. 2020) (finding that USCIS insufficiently explained why letters detailing a researcher's work did not constitute evidence of his original contributions of major significance)

Based on the letters and the Petitioner's citation evidence, a preponderance of the evidence demonstrates that his original contributions to the field have major significance. We will therefore withdraw the Director's contrary finding.

D. Commandment of a High Salary or Significantly High Remuneration

As required for a final merits determination, the Petitioner has met three evidentiary criteria. Thus, we need not reach and hereby reserve consideration of whether he submitted evidence that he commanded a high salary or significantly high remuneration relative to others in his field. *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).

The Director did not make a final merits determination. Rather than issue one in the first instance, we will remand the matter.

On remand, the Director must determine whether the Petitioner has sustained national or international acclaim and received recognition of his achievements in his field commensurate with one of that small percentage who has risen to his field's very top. *See generally* 6 *USCIS Policy Manual* F.2(B)(2). The Director should base the petition's approval or denial on the evidence's type and quality. *Id.* She should consider any potentially relevant evidence of record, even if it does not fit one of the regulatory criteria or was not presented as comparable evidence. *Id.* The Petitioner bears the burden of explaining the significance of his evidence and how it demonstrates that he has sustained national or international acclaim and recognition in his field.

III. CONCLUSION

The Petitioner met the minimum required amount of evidentiary criteria by submitting evidence of his original contributions of major significance to the field. USCIS must now conduct a final merits determination.

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