U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29913834

Date: FEB. 14, 2024

Appeal of Vermont Service Center Decision

Form I-129, Petition for a Nonimmigrant Worker (Extraordinary Ability – O)

The Petitioner, a semiconductor manufacturing business, seeks to classify the Beneficiary, a senior software development engineer, as an individual of extraordinary ability. This O-1 nonimmigrant visa classification is available to individuals who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation. *See* Immigration and Nationality Act (the Act) section 101(a)(15)(O)(i), 8 U.S.C. § 1101(a)(15)(O)(i).

The Director of the Vermont Service Center denied the petition, concluding the Beneficiary had not satisfied the initial evidentiary criteria applicable to individuals of extraordinary ability: either receipt of a major, internationally recognized award or at least three of eight possible forms of documentation. 8 C.F.R. § 214.2(o)(3)(iii)(A)-(B). The matter is now before us on appeal. 8 C.F.R. § 103.3.

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

As relevant here, section 101(a)(15)(O)(i) of the Act establishes O-1 classification for an individual who has extraordinary ability in the sciences, arts, education, business, or athletics that has been demonstrated by sustained national or international acclaim, whose achievements have been recognized in the field through extensive documentation, and who seeks to enter the United States to continue work in the area of extraordinary ability. Department of Homeland Security (DHS) regulations define "extraordinary ability in the field of science, education, business, or athletics" as "a level of expertise indicating that the person is one of the small percentage who have arisen to the very top of the field of endeavor." 8 C.F.R. § 214.2(o)(3)(ii).

Next, DHS regulations set forth alternative evidentiary criteria for establishing a beneficiary's sustained acclaim and the recognition of achievements. A petitioner may submit evidence either

of "a major, internationally recognized award, such as a Nobel Prize," or of at least three of eight listed categories of documents. 8 C.F.R. § 214.2(o)(3)(iii)(A)-(B).

The submission of documents satisfying the initial evidentiary criteria does not, in and of itself, establish eligibility for O-1 classification. *See* 59 Fed. Reg. 41818, 41820 (Aug. 15, 1994) ("The evidence submitted by the petitioner is not the standard for the classification, but merely the mechanism to establish whether the standard has been met.") Accordingly, where a petitioner provides qualifying evidence satisfying the initial evidentiary criteria, we will determine whether the totality of the record and the quality of the evidence shows sustained national or international acclaim such that the individual is among the small percentage at the very top of the field of endeavor. *See* section 101(a)(15)(o)(i) of the Act and 8 C.F.R. § 214.2(o)(3)(ii), (iii).[1]

II. ANALYSIS

Because the Petitioner did not indicate or establish the Beneficiary has received a major, internationally recognized award, it must demonstrate the Beneficiary satisfies at least three of the alternate regulatory criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B)(*1*)-(*8*). The Director determined the Beneficiary fulfilled only two criteria, judging under 8 C.F.R. § 214.2(o)(3)(B)(iii)(*4*) and scholarly articles under 8 C.F.R. § 214.2(o)(3)(B)(iii)(*6*). On appeal, the Petitioner maintains the Beneficiary meets three additional categories.[2]

> *Evidence of the alien's original scientific, scholarly, or business-related contributions of major significance in the field.* 8 C.F.R. § 214.2(o)(3)(iii)(B)(*5*).

Analysis under this criterion focuses on whether the beneficiary's original work constitutes major, significant contributions in the field.[3] The Petitioner argues the Beneficiary's eligibility for this criterion based on his publication of "articles in highly ranked journals relative to other journals." Evidence that the beneficiary's work was funded, patented, or published, while potentially demonstrating the work's originality, will not necessarily establish, on its own, the work is of major significance in the field.[4] Here, the Petitioner did not show how the publication of articles in highly ranked or popular journals automatically demonstrates the research and work to be original contributions of major significance. Moreover, publications bearing high rankings or impact factors reflect the publications' overall citation rates; they do not establish the reported research's influence or automatically indicate a contribution of major significance in the field.

Similarly, the Petitioner contends that the Beneficiary "was first author in all but one of the publications." However, the Petitioner did not show how serving as first author for published papers automatically reflects majorly significant contributions. In fact, any published paper inevitably contains a first author, and thus we are not persuaded by the Petitioner's reasoning that first-authored papers certainly indicates contributions of major significance in the field. Following this argument,

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[1] *See also 2 USCIS Policy Manual*, M.4(C)(2), https://www.uscis.gov/policymanaul.
[2] We consider any previous eligibility claims not raised on appeal to be waived. *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)).
[3] *See generally* 2 *USCIS Policy Manual*, *supra*, at M.4(C)(2)(appendix).
[4] *Id.*

any person who first authors a paper would establish a contribution of major significance, regardless of the paper's impact, influence, or effect in the field.

The Petitioner also claims the Beneficiary's "citation count had in fact increased by almost three-fold – a 170% increase – in simply a matter of five months from the time of filing of the petition in late January, to the submission of the RFE [request for evidence] Response in late June." Eligibility must be established at the time of initial filing. 8 C.F.R. § 103.2(b)(1). Although the Petitioner provided updated citation rates in response to the Director's RFE, the Petitioner did not demonstrate whether any of the additional figures occurred in papers published at the time of initial filing. Regardless, the Petitioner initially provided evidence reflecting that the Beneficiary's two highest cited papers garnered 7 [redacted] and 4 [redacted] citations, respectively.[5]

Again, this criterion requires the Petitioner to establish the Beneficiary's original contributions of major significance in the field. Generally, citations can serve as an indication that the field has taken interest in a beneficiary's research or written work. 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 other works in that field, may be probative of the significance of the beneficiary's contributions to the field of endeavor.[6] Here, the Petitioner has not shown that the citation figures for any of the Beneficiary's published articles are commensurate with contributions of major significance. The Petitioner did not articulate the significance or relevance of the citation data. For example, the Petitioner did not demonstrate that these citations are unusually high in the Beneficiary's field or how they compare to other articles considered to have been majorly significant. Although the citations indicate the Beneficiary's research and work has received some attention from the field, the Petitioner did not establish that the Beneficiary's citation numbers to his individual articles represent majorly significant contributions in the field.

Further, the Petitioner asserts the submission of testimonial letters established the Beneficiary's contributions of major significance.[7] In general, the letters recount on the Beneficiary's research and findings and indicate their publications in journals. Although they reflect the novelty of his work, they do not sufficiently articulate how the Beneficiary's research and findings have been considered of such importance and how their impact rises to the level of major significance required by this regulatory criterion. For instance, the letters from Dr. S-D- and W-C-R- indicated several of the Petitioner's research applications, such as the Beneficiary "created a ML [machine learning] model which can predict the size, power and speed of a FPGA chip just by looking into the behavioral description of the design," and "he had applied his model for faster designing of image recognition chips using

[5] In response to the RFE, the evidence indicates that each paper garnered 1 additional cite, and the Beneficiary's other papers received 1-2 additional citations.

[6] *See generally* 2 *USCIS Policy Manual*, *supra*, at M.4(C)(2)(appendix).

[7] The Petitioner submitted a new testimonial letter on appeal that was not presented to the Director. Because the Petitioner was put on notice and given a reasonable opportunity to provide this evidence, we will not consider it for the first time on appeal. *See* 8 C.F.R. § 103.2(b)(11) (requiring all requested evidence be submitted together at one time); *Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988) (declining to consider new evidence submitted on appeal because "the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the denial").

convolution neural networks (CNN)." However, neither letter further elaborates and describes how the Beneficiary's research or work has significantly influenced the field in a major way.

Moreover, some of the letters speculate on the potential influence of the Petitioner's work and propose that it will have an impact at some undefined point in the future. For instance, Dr. S-N- claimed "[t]his work will extremely benefit both the EDA [electronic design automation] industry and the VLSI [very large-scale integration] industry," and "[t]his is a marvelous work which can be applied to wide range of applications in the industry." Likewise, Dr. D-B- stated that "[t]his approach of generating standardized benchmark designs will help design future HLS [high-level synthesis] tools efficiently," and "I think this breakthrough research work will majorly impact EDA tools that will use machine learning in the design flows." While the letters show promise in the Beneficiary's work, they do not establish how his work already qualifies as a contribution of major significance in the field; rather than prospective, potential impacts. The significant nature of the Beneficiary's work has yet to be determined or measured.

Detailed letters from experts in the field explaining the nature and significance of the beneficiary's contribution(s) may also provide valuable context for evaluating the claimed original contributions of major significance, particularly when the record includes documentation corroborating the claimed significance.[8] Submitted letters should specifically describe the beneficiary's contributions and its significance to the field and should also set forth the basis of the writer's knowledge and expertise.[9] Here, for the reasons discussed above, the letters do not contain specific, detailed information explaining the unusual influence or high impact the Beneficiary's research or work has had on the field, demonstrating that his work has risen to a level of major significance in the field.

Accordingly, considered both individually and collectively, the Petitioner has not shown the Beneficiary has made original contributions of major significance in the field.

> *Evidence that the alien has been employed in a critical or essential capacity for organizations or establishments that have a distinguished reputation.* 8 C.F.R. § 214.2(o)(3)(iii)(B)(*7*).

To show a critical role, the evidence should establish that the beneficiary has contributed in a way that is of significant importance to the organization or establishment's activities.[10] To show an essential role, the evidence should establish that the beneficiary's role is (or was) integral to the entity.[11] For a supporting role to be considered critical or essential, USCIS considers other factors, such as whether the beneficiary's performance in the role is (or was) integral or important to the organization or establishment's goals or activities, especially in relation to others in similar positions within the organization.[12] It is not the title of the beneficiary's role, but rather the beneficiary's duties and performance in the role that determines whether the role is (or was) critical or essential.[13]

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[8] *See generally* 2 *USCIS Policy Manual*, *supra*, at M.4(C)(2)(appendix).
[9] *Id.*
[10] *See generally* 2 *USCIS Policy Manual*, *supra*, at M.4(C)(2)(appendix).
[11] *Id.*
[12] *Id.*
[13] *Id.*

The Petitioner argues the Beneficiary "holds a critical and highly specialized role for the [Petitioner]." In response to the Director's RFE, the cover letter claimed:

> The Beneficiary is a part of the Software Development team that primarily works on our Radiant software. Radiant software is included in [the Petitioner's] FPGA products, enabling the company's FPGA revenue. The Radiant software the Beneficiary works on has grown more complex with the launch of Mid-Range FPGA product[redacted] The launch of [redacted] is a critical part of [the Petitioner's] overall strategy, doubling the company's addressable market over the next 5 years. By 2028, 55% of [the Petitioner's] $10 billion addressable market will be driven by the [redacted] Mid-Range FPGA. The Beneficiary's experience and knowledge is critical to the success of [redacted] and the growth of [the Petitioner's] addressable market. Currently the Beneficiary is conducting research into how Machine Learning and Artificial Intelligence can be applied to enhance and optimize the Radiant Software for next generation[redacted] FPGA devices.

Although the Petitioner indicated the Beneficiary's work on its Radiant software, the Petitioner did not provide specific, detailed information explaining how the Beneficiary has contributed in a way that is of significant importance. Rather, the Petitioner broadly referenced the Beneficiary's experience and knowledge. The Petitioner, for instance, did not elaborate and articulate how the Beneficiary's experience and knowledge has substantially impacted Radiant's success. Detailed letters from persons with personal knowledge of the significance of the beneficiary's role can be particularly helpful in analyzing this criterion.[14] Here, the Petitioner did not provide a detailed letter from a person with personal knowledge of the significance of the Beneficiary's role; rather the record contains an RFE response letter from counsel.

Moreover, the Petitioner contends it provided charts to "illustrate how [the Beneficiary's] work directly impacts the company's current and future bottomline [sic]." Included in the RFE response letter, the Petitioner offered two charts entitled, "Doubled Our Addressable Market with [redacted]' and [redacted]SAM Outlook." At the outset, this criterion requires evidence of the beneficiary having been employed in a critical or essential capacity rather than whether the beneficiary will have a prospective critical or essential role. Furthermore, although the chart claims that [redacted] doubled the market from Nexus, the Petitioner did not reference any supporting evidence to substantiate the chart's data, let alone evidence showing the Beneficiary's contribution in a critical or essential capacity. The record, for example, does not contain evidence showing the Beneficiary's contributions resulted in [redacted] doubling the market for the Petitioner.

Finally, the Petitioner asserts it "submitted evidence that [the Beneficiary] is one out of only five employees in the same role; one out of five from a total US employee count of 343." The record reflects that the RFE response letter, arguing eligibility for the high salary criterion, made this claim. However, the Petitioner did not present any evidence to support these assertions. Regardless, the Petitioner argues that "[s]imply going by these employee numbers alone, it should already be obvious that [the Beneficiary] holds a critical and highly specialized role for the company." The Petitioner did not demonstrate that holding a position with a limited number of other employees automatically shows

[14] *See generally* 2 *USCIS Policy Manual*, *supra*, at M.4(C)(2)(appendix).

the critical or essential capacity, as well as how the Beneficiary differentiated from the other four individuals who hold the same position. As indicated above, the beneficiary's duties and performance in the role determines whether the role is (or was) critical or essential.[15]

Because the Petitioner did not provide specific, detailed information reflecting the Beneficiary's duties and performance and how they have contributed to the company's goals or activities, the Petitioner did not establish the Beneficiary satisfies this criterion.

> *Evidence that the alien has either commanded a high salary or will command a high salary or other remuneration for services, evidenced by contracts or other reliable evidence.* 8 C.F.R. § 214.2(o)(3)(iii)(B)(*8*).

If the petitioner is claiming to meet this criterion, then the burden is on the petitioner to provide appropriate evidence establishing that the beneficiary's compensation is high relative to others working in similar occupations in the field.[16] The Petitioner initially provided a job offer letter for the position of a senior software development engineer reflecting $150K in base salary, 10% cash incentive plan, $10K sign-on bonus, and restricted stock units valued at $40K. The Petitioner also submitted a letter confirming the Beneficiary's annual compensation equals $217K. Further, the Petitioner offered wage data from flcdatacenter.com reflecting Level 4 annual wages for "Software Developers" in the [redacted] California area earn $193K.

In response to the Director's RFE, the Petitioner submitted "Average Compensation Breakdown" of "Lead Software Engineer" from Cadence Design Systems ($160K - $170K total compensation); "Average Compensation By Level" of "Software Engineer" (various grades) from Intel ($134K - $539K total compensation)[17]; various positions from Synopsis ($136K - $310K total compensation); and various level positions from Xilinx ($150K - $240K).

Although the Petitioner argues that the Beneficiary's total compensation is higher than the median, the Petitioner's comparable data does not demonstrate the Beneficiary commands a high salary or other remuneration for services as required by this regulatory criterion. The Beneficiary's total compensation of $217K falls within the average salary data supplied by the Petitioner rather than at the higher end of the spectrum. Furthermore, the Petitioner employs the Beneficiary as a senior software development engineer while the comparable evidence reflects a range of occupations, such as software engineer, lead software engineer, and various grades and levels of software engineers. The Petitioner did not establish how the Beneficiary's occupation, which appears to be at a higher level, compares to these positions, some of which earn more than the Beneficiary.

Moreover, the Petitioner compares the Beneficiary's total compensation to a limited, selected pool of positions rather than the total compensation figures for senior software development engineers in the area. Even comparing the Beneficiary's base salary of a senior software development engineer to the

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[15] *See generally* 2 *USCIS Policy Manual*, *supra*, at M.4(C)(2)(appendix).

[16] *See generally* 2 *USCIS Policy Manual*, *supra*, at M.4(C)(2)(appendix).

[17] The Petitioner claims that "[t]he alleged data point relied on by the [Vermont Service Center] which assigned salaries for comparable positions 'from $97,000 to $539,000' is nowhere to be found in the documents submitted with the RFE Response." On the contrary, at the top of the screenshot from levels.fyi submitted by the Petitioner shows "Intel Software Engineer Salary $134K-$539K."

Petitioner's initial evidence from flcdatacenter.com for software developers in the geographic area, the Beneficiary earns a substantially lower salary in relation to Level 4 wages.

Accordingly, the Petitioner did not demonstrate the Beneficiary meets this criterion.

III. CONCLUSION

The Petitioner did not show the Beneficiary meets three categories of evidence. As such, we need not provide a totality determination to establish whether the Beneficiary has sustained national or international acclaim and is one of the small percentage who has arisen to the very top of the field. *See* section 101(a)(15)(O)(i) of the Act and 8 C.F.R. § 214.2(o)(3)(ii) and (iii).[18] Accordingly, we reserve this issue.[19] Consequently, the Petitioner has not established the Beneficiary's eligibility for the O-1 visa classification as an individual of extraordinary ability. 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.

[18] *See also* 2 *USCIS Policy Manual*, *supra*, at M.4(B).

[19] *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where applicants do not otherwise meet their burden of proof).