U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 6346490

Date: FEB. 19, 2020

Appeal of Vermont Service Center Decision

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

The Petitioner, a business specializing in high-technology data analytics, seeks to classify the Beneficiary, a maritime data scientist, as a foreign national of extraordinary ability in the sciences. To do so, the Petitioner seeks O-1 nonimmigrant classification, available to foreign nationals 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 that the Petitioner did not submit a written consultation from an appropriate labor organization under 8 C.F.R. § 214.2(o)(2)(ii)(D), and did not satisfy, as required, the alternative evidentiary criteria applicable to individuals of extraordinary ability in the sciences, either a major, internationally recognized award or at least three of eight possible forms of documentation pursuant to 8 C.F.R. § 214.2(o)(3)(iii)(A)-(B).

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. 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]

Additionally, the regulation at 8 C.F.R. § 214.2(o)(2)(ii)(D) provides that all petitions for O classification must be accompanied by "[a] written advisory opinion(s) from the appropriate consulting entity or entities."

II. ANALYSIS

The evidence indicates that in 2006 the Beneficiary was awarded a degree in Meterology from [redacted] State University. At the time of filing, the Beneficiary was working as a meteorologist for [redacted], an insurance underwriter and broker based in France, specializing in weather risk management.

A. Consultation Requirement

The first issue addressed by the Director is whether the Petitioner submitted the required written advisory opinion from an appropriate consulting entity. *See* 8 C.F.R. § 214.2(o)(2)(ii)(D). The Petitioner's initial evidence included recommendation letters from [redacted] professor of meteorology at [redacted] University, [redacted], a geographer and project officer for [redacted], a professor of atmospheric physics and optics at [redacted] University, and [redacted] a scientist at [redacted] Laboratory. The Director denied the petition because the Petitioner did not provide a written consultation from a peer group. Upon review, we will withdraw the Director's determination. Pursuant to 8 C.F.R. § 214.2(o)(5)(ii)(A), consultation with a peer group in the area of the alien's ability (which may include a labor organization) or a person or persons with expertise in the area of the alien's ability, is required in an O-1 petition for an alien of extraordinary ability. The Petitioner is not required to submit a consultation from a peer group, as long as it submits one of the qualifying forms of documentation. Upon review, the aforementioned letters are sufficient evidence of consultation from persons with expertise in the Beneficiary's field.

B. Evidentiary Criteria

Because the Petitioner has not indicated or established that the Beneficiary has received a major, internationally recognized award, it must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B)(*1*)-(*8*). In denying the petition, the Director found that the Petitioner satisfied only two of the initial evidentiary criteria: judging under 8 C.F.R § 214.2(o)(3)(iii)(B)(*4*) and scholarly articles under 8 C.F.R § 214.2(o)(3)(iii)(B)(*6*). The record reflects that the Beneficiary

[1] *See also Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010), in which we held that, "truth is to be determined not by the quantity of evidence alone but by its quality."

served as an expert reviewer for the [redacted] assessment report, [redacted], and authored scholarly articles in professional publications. Accordingly, we agree with the Director that the Petitioner fulfilled the judging and scholarly articles criteria.

On appeal, the Petitioner maintains that the Beneficiary meets one additional criterion, discussed below. We have reviewed all of the evidence in the record and conclude that it does not support a finding that the Petitioner satisfies the requirements of at least three criteria.[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).

The Petitioner contends that the Beneficiary meets this criterion based on reference letters from colleagues and other scientists and researchers, as well as the Beneficiary's scholarly articles, conference presentations, research projects, and commercialization of her work in creating the startup [redacted]. In order to satisfy this criterion, a petitioner must establish that not only has a beneficiary made original contributions but that they have been of major significance in the field. For example, a petitioner may show that a beneficiary's contributions have been widely implemented throughout the field, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance in the field.

The Petitioner references its submission of letters from the Beneficiary's colleagues and other scientists and experts regarding her original contributions in her field.[3] The letters summarize the Beneficiary's research achievements and broadly discuss the potential impact of her research in the field of meteorology. However, they do not establish that her original contributions are already recognized as majorly significant within these fields.

For example, [redacted], a geographer and project officer for [redacted], asserts that the Beneficiary is a "stand-out scientist in the field of meteorology," specifically within the realm of [redacted]. She states that in 2016 the Beneficiary developed and established [redacted], which she describes as "a scientific start-up with the mission to [redacted] in terms of [redacted]' to support [redacted] trading. She provides that [redacted] was purchased by [redacted] the Beneficiary's current employer. She urges that the Beneficiary's "innovative research" on weather and climate risks "is of great value for applied meteorology" and "her novel risk hedging ideas and solutions should be implemented on [a] governmental level to improve the life quality in high risk regions."

[redacted], professor of meteorology at [redacted] University, indicates that he became acquainted with the Beneficiary's work when she was a doctoral student jointly supervised by two of his colleagues. He indicates that the Beneficiary has produced "high-quality research results" such as having proposed and developed a solution for the [redacted] in remote areas such as [redacted] and having been "one of the first to quantify the effect of [redacted]

[2] On appeal, the Petitioner does not claim to meet any of the regulatory categories of evidence not discussed in this decision.
[3] Although we discuss a sampling of letters, we have reviewed and considered each one.

[redacted]" He asserts that work "has deepened our understanding of the physical mechanisms leading to the rapid [redacted]" and her "original research contributions in [redacted] are recognized and used by other researchers."

The Petitioner provided two testimonial letters from [redacted] the co-supervisor of the Beneficiary's doctoral thesis, and the head of the meteorological research unit at the [redacted] in [redacted] Finland. He indicates that the Beneficiary's second-highest cited article (*Journal of Geophysical Research*) published the primary finds of her doctoral research on [redacted]" He asserts that the Beneficiary's doctoral work involved conducting original research on topics such as those discussed in the above-mentioned letter of [redacted]; quantifying the effect of [redacted] and [redacted] in remote areas such as [redacted] He praises the Beneficiary's "devotion and enthusiasm to research work, high scientific skills, capability in solving problems, innovation, and carefulness."

The Petitioner also submitted two letters of recommendation from [redacted], an associate professor of physics at [redacted] University, where the Beneficiary was a postdoctoral researcher. He indicates that the results of their joint study of [redacted] were published in the Beneficiary's fourth-highest cited article (*Boundary-layer Meteorology*). He indicates that the Beneficiary "introduced numerous valuable ideas and critical improvements, both for the [redacted] and for the [redacted] into the model," and that her background in [redacted] dynamics "enabled the refinement of model parameterizations (model set-up), and allowed for accurate process studies." He asserts that she "is contributing greatly" to [redacted] research.

Overall, the letters recognize the originality, importance, and prospective benefit of the Beneficiary's work, but do not contain detailed information showing the unusual influence or high impact her contributions have already had on the overall field. These and other letters not specifically mentioned, as well as other evidence in the record, show that the Beneficiary's original work has added significant value to the pool of knowledge in her field, and opened avenues for further research in the use of [redacted] in meteorology for climate risks. The evidence, however, is insufficient to confirm that the level of attention she has received reflects widespread commentary and acceptance of her work, or that the field of meteorology has regarded her research as authoritative. 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).

In addition, although the Petitioner asserts that the publication of the Beneficiary's research is evidence of its significance, the record does not sufficiently demonstrate that her written work has been considered of major significance in the field. Within its initial filing, the Petitioner submitted information from *Google Scholar* reflecting 80 cumulative citations to the Beneficiary's 4 published articles. Specifically, the record shows that her two highest cited articles received 37 (*Atmospheric Chemistry and Physics*) and 35 (*Journal of Geophysical Research)* citations, respectively.[4] This criterion requires the Petitioner to establish that the Beneficiary has made original contributions of

[4] The Beneficiary's remaining 2 articles received 1 and 7 citations, respectively.

major significance in the field. Thus, the burden is on the Petitioner to identify the Beneficiary's original contributions and explain why they are 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. However, the Petitioner has not sufficiently shown that the Beneficiary's citations for any of her published articles are commensurate with contributions of major significance. Here, the Petitioner did not articulate the significance or relevance of the citations to the Beneficiary's articles. Although the Beneficiary's citations are indicative that her research has received some attention from the field, the Petitioner did not demonstrate that the Beneficiary's citation numbers to her individual articles represent majorly significant contributions in the field.

The Petitioner also submitted excerpts of articles that cited to the Beneficiary's work as evidence that she has made original contributions of major significance in the field. A review of the sample articles, though, does not show the significance of the Beneficiary's research to the overall field beyond the authors who cited to her work.[5] For instance, the Petitioner provided an excerpt of an article entitled, [redacted] (*Nature Climate Change*), in which the authors, including [redacted], cited to the Beneficiary's second-highest cited article (*Journal of Geophysical Research*).[6] However, the article does not distinguish or highlight the Beneficiary's written work from the 29 other cited papers. In the case here, the Petitioner has not shown that the Beneficiary's published articles through citations rise to a level of "major significance" consistent with this regulatory criterion.

In addition, the Petitioner argues that the Beneficiary's articles have been published in leading outlets in her field, including *Atmospheric Chemistry and Physics*, *Journal of Geophysical Research*, *Journal of Climate*, and *Boundary-layer Meteorology*. This claim appears to be based on "Impact Factor" data provided by the journals' own websites. However, the Petitioner has not demonstrated that publication of the Beneficiary's articles in highly ranked journals establishes that the field considers her research to be an original contribution of major significance. Moreover, a publication that bears a high ranking or impact factor is reflective of the publication's overall citation rate. It does not show an author's influence or the impact of research on the field or that every article published in a highly ranked journal automatically indicates a contribution of major significance. Here, the Petitioner has not established that publication in a popular or highly ranked journal alone demonstrates a contribution of major significance in the field.

The Petitioner also asserts that the Beneficiary's startup [redacted], a company that [redacted] and [redacted] in support of [redacted] trading, is proof that she has made a significant contribution to the field. As discussed previously, the record indicates that [redacted] was purchased by [redacted], the Beneficiary's current employer. However, the Petitioner has not explained how founding that startup constitutes a significant contribution to the field. Further, the Petitioner emphasizes the fact that the Beneficiary's work has been presented at international conferences, and several reference letters mention the Beneficiary's participation in professional conferences. The letters, however, do not explain how her presentation and conference activities have impacted or influenced the field as a whole. Participation in a conference demonstrates

[5] *See Visinscaia v. Beers*, 4 F. Supp. 3d 126, 134-35 (D.D.C. 2013) (upholding a finding that a ballroom dancer had not met this criterion because she did not corroborate her impact in the field as a whole).

[6] Although we discuss a sample article, we have reviewed and considered each one.

that her findings were shared with others, but being selected to present, without more, is not indicative of the major significance of her contributions.

For the reasons discussed above, considered both individually and collectively, the Petitioner has not shown that the Beneficiary has made original contributions of major significance in the field.

III. CONCLUSION

The record does not satisfy, as required, the evidentiary criteria applicable to individuals of extraordinary ability in the sciences: 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). Consequently, the Petitioner has not established that the Beneficiary is eligible for the O-1 visa classification as an individual of extraordinary. 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.