U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 10161384

Date: FEB. 26, 2021

Appeal of Vermont Service Center Decision

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

The Petitioner, a university, seeks to classify the Beneficiary, a physicist, as an O-1 nonimmigrant, a visa classification 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 that the Petitioner did not demonstrate that the Beneficiary satisfied the initial evidentiary criteria applicable to individuals of extraordinary ability in business: 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).

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]

II. ANALYSIS

A. Evidentiary Requirements

The Petitioner seeks to employ the Beneficiary as an assistant professor. The Director determined that the Beneficiary did not receive a major, internationally recognized award under 8 C.F.R. § 214.2(o)(3)(iii)(A) and satisfied only two of the eight regulatory criteria under 8 C.F.R. § 214.2(o)(3)(iii)(B): original contributions of major significance at 8 C.F.R. § 214.2(o)(3)(iii)(B)(5) and scholarly articles at 8 C.F.R. § 214.2(o)(3)(iii)(B)(6). On appeal, the Petitioner demonstrates that the Beneficiary fulfills the judging criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(4), discussed further below.

Because the Petitioner has shown that the Beneficiary satisfies the minimum evidentiary requirements of at least three criteria, we will consider the totality of the evidence in the record to determine whether the Petitioner demonstrated the Beneficiary's eligibility as an individual of extraordinary ability.[2]

B. Totality Determination

In a totality determination, we will evaluate whether the Petitioner has established, by a preponderance of the evidence, the Beneficiary's sustained national or international acclaim, that he is one of the small percentage who has risen to the very top of the field of endeavor, and that his achievements have been recognized through extensive documentation. See 8 C.F.R. § 214.2(o)(1)(ii)(A)(1), 8 C.F.R. § 214.2(o)(3)(ii), and section 101(a)(15)(O)(i) of the Act.[3] In this matter, we conclude that the Petitioner has not shown the Beneficiary's eligibility.

The record reflects that the Beneficiary received a bachelor of science in physics from [redacted] University in 2006, a master of science in physics from [redacted] University in 2008, and a doctor of philosophy in physics from [redacted] University in 2013. According to his curriculum vitae, the

[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."

[2] See also 2 USCIS Policy Manual M.4(B), https://www.uscis.gov/policymanual (providing that as explained in the preamble to the final rule at 59 FR 41818, 41820 (Aug. 15, 1994), the evidentiary requirements are not the standard for the classification, but are instead the mechanism for establishing whether the standard is met, and that when the evidentiary requirements specified are satisfied, an officer proceeds to evaluate the totality of all the evidence in the record to determine whether it establishes that the beneficiary has sustained national or international acclaim and is one of the small percentage who has risen to the very top of his or her field).

[3] See also 2 USCIS Policy Manual, supra, at M.4(A) (indicating Black's Law Dictionary's definition of "sustain" as to support or maintain, especially over a long period of time and to persist in making an effort over a long period).

Beneficiary was employed as a postdoctoral research associate at the University [redacted] at [redacted] Laboratory from 2013 to 2016 and is currently employed as a postdoctoral research associate at the University [redacted] since 2016. The Beneficiary judged others, made original contributions, and authored scholarly articles. However, the record does not demonstrate that his professional achievements reflect sustained national or international acclaim or that he has is one of the small percentage who has risen to the very top of the field of endeavor. See section 101(a)(15)(O)(i) of the Act, 8 C.F.R. § 214.2(o)(1)(ii)(A)(1) and 8 C.F.R. § 214.2(o)(3)(ii).

Relating to the Beneficiary's judging experience, the Petitioner presented evidence reflecting that the Beneficiary served as a referee nine times for the journals, Physical Review D, Physical Review Letters, and the Journal of High Energy Physics [4] However, the Petitioner did not demonstrate that these nine instances for three journals contribute to a record of sustained national or international acclaim. See section 101(a)(15)(O)(i) of the Act and 8 C.F.R. § 214.2(o)(1)(ii)(A)(1). The Petitioner did not establish, for example, how the Beneficiary's experience in refereeing nine journal papers compares to others at the very top of the field. In addition, the Petitioner did not show, for instance, that the Beneficiary garnered wide attention from the field based on his journal reviews. Without evidence that sets the Beneficiary apart from others in his field, such as evidence that he has a consistent history of reviewing or judging recognized, acclaimed experts in his field, serving in editorial positions for prestigious journals, chairing technical committees for reputable or distinguished conferences, or refereeing a substantial number of articles, the Petitioner has not shown that the Beneficiary's judging experience places him among that small percentage who has risen to the very top of the field of endeavor. See 8 C.F.R. § 214.2(o)(3)(ii).

In regards to the Beneficiary's contributions, the Petitioner provided recommendation letters discussing the Beneficiary's development of the [redacted], a tool which expands the use of the Large Hadron Collider (LHC) to test [redacted] in 2012. For instance, "[the Beneficiary's] [redacted] tool is helping to expand [redacted] experiments and interpretations at the LHC" [redacted]; [the Beneficiary] developed a tool now widely used by international particle physics teams" and "his work was used, with acknowledgement, by the [redacted] team who discovered the [redacted] a major finding for which the original researchers were awarded a Nobel Prize" [redacted]; and "[b]etween 2012 and 2013, he published a series of articles explaining a tool he developed called the [redacted]" and the "tool has since become widely used and has helped to interpret the experiments carried out at the [LHC], one of the leading research facilities in the world" [redacted]. Although the letters indicate a contribution made by the Beneficiary over seven years ago, they do not demonstrate his recent, significant contributions in the field, showing sustained national or international acclaim. See

[4] The Petitioner claims that it "submitted evidence that [the Beneficiary] has completed reviews for The Journal of High Energy Physics, Physical Review Letters, Physical Review D, and the European Physical Journal C" and references "Exhibit N" of the initial petition filing. Under "Exhibit N," the Petitioner provided a letter from the American Physical Society relating to the Beneficiary's review of eight papers for Physical Review Letters and Physical Review D, emails regarding the Beneficiary's review of a paper for the Journal of High Energy Physics, and two screenshots from manuscriptcentral.com for "Scores Returned" from the European Physical Journal C for three papers. However, the screenshots do not indicate or mention the Beneficiary reviewing articles, nor did the Petitioner point to how the evidence shows that he performed reviews for the European Physical Journal C.

section 101(a)(15)(O)(i) of the Act and 8 C.F.R. § 214.2(o)(1)(ii)(A)(1).[5] Instead, the letters speculate on the Beneficiary's futuristic impact in the field. For example, "[the Beneficiary's] proposed research would probe substantially further than any existing experiments and would maximize the American investment in [redacted] neutrino experiments" [redacted]; and "[the Beneficiary] and I recently published two articles on the [redacted] Theory," and "[o]ur work makes precise predictions of processes at extreme high energies, which will be attained by future particle accelerators" [redacted]. (emphasis added). Here, the Petitioner did not establish the Beneficiary's sustained national or international acclaim through his continuous, influential contributions in the field rather than prospective, potential impacts.

As it pertains to his publication history, the Petitioner submitted evidence showing that the Beneficiary published 23 articles from 2008 – 2019. However, the Petitioner did not demonstrate that this publication record is consistent with being among that small percentage who has risen to the very top of the field of endeavor. See 8 C.F.R. § 214.2(o)(3)(ii). The Petitioner did not show, for instance, the significance of his authorships of 23 papers over an 11-year span or how his publications compare to others with similar years of experience who are viewed to be at the very top of the field.

As authoring scholarly articles is often inherent to the work of scientists 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 that his work has had on the field and whether such influence has been sustained. For example, numerous independent citations for an article authored by the Beneficiary may provide solid evidence that his work has been recognized and that other physicists have been influenced by his work. The Petitioner provided evidence from Google Scholar showing 1,224 cumulative citations of the Beneficiary's publications, with his highest cited article in 2012 receiving 114 citations. However, the Petitioner did not demonstrate the significance or relevance of the citations, both cumulatively and individually. For example, the Petitioner did not establish how the Beneficiary's citations compare to others in the field or how they show that he is among that small percentage who has risen to the very top of the field of endeavor. See 8 C.F.R. § 214.2(o)(3)(ii).[6] Moreover, although we recognize that older articles may garner more citations and newer articles may garner lesser citations based on their length of availability to the field, the Beneficiary's top cited papers (35 – 114) occurred from publications in 2010 – 2015, with his highest most recent publication (30) occurring in 2017. Here, the Petitioner did not show how his more recent published material commands attention consistent with sustained national or international acclaim. See section 101(a)(15)(O)(i) of the Act and 8 C.F.R. § 214.2(o)(1)(ii)(A)(1).

[5] See also 2 USCIS Policy Manual, supra, at M.4(A) (providing that if a beneficiary was recognized for a particular achievement, the officer should determine whether the beneficiary continues to maintain a comparable level of acclaim in the field of expertise since the beneficiary was originally afforded that recognition, and a beneficiary may have achieved national or international acclaim in the past but then failed to maintain a comparable level of acclaim thereafter).

[6] The Petitioner also submitted a screenshot from inspirehep.net opining on the breakdown of papers by citations: "Renowned papers" (500+), "Famous papers" (250-499), "Very well-known papers" (100-249), "Known papers" (10-49), "Less known papers" (1-9), and "Unknown papers" (0). Based on the "Published only" papers, the Petitioner has no "Renowned" or "Famous" papers and only two "Well-known" papers occurring 6-7 years ago, which is not indicative of sustained national or international acclaim or reflective of being among that small percentage who has risen to the very top of the field of endeavor. See section 101(a)(15)(O)(i) of the Act, 8 C.F.R. § 214.2(o)(1)(ii)(A)(1), and 8 C.F.R. § 214.2(o)(3)(ii).

Beyond the three evidentiary requirements satisfied by the Beneficiary, we consider additional documentation in the record to determine whether the totality of the evidence demonstrates eligibility. Here, for the reasons discussed below, we find that the evidence does not establish that the Beneficiary has sustained national or international acclaim and is among that small percentage at the top of his field.

The Petitioner provided evidence reflecting that the Beneficiary received a 2008 [redacted] scholarship while studying at [redacted] University "to pursue PhD-level research at [redacted] University." Although a [redacted] scholarship "brings graduate students, early career professionals, and artists from abroad to conduct research and study in the United States," the Petitioner did not demonstrate how receiving a scholarship intended for individuals at the beginning of their careers establishes that the Beneficiary is among that small percentage at the very top of the field. See 8 C.F.R. § 214.2(o)(3)(ii). Here, the Beneficiary received a scholarship while competing against other graduate students and early career professionals rather than accomplished, recognized professionals who are viewed at the top of the field. Moreover, the Petitioner did not show how receiving an academic scholarship over 10 years ago, geared towards furthering his studies, reflects the Beneficiary's sustained national or international acclaim in the physics field. See section 101(a)(15)(O)(i) of the Act and 8 C.F.R. § 214.2(o)(1)(ii)(A)(1). The Petitioner did not demonstrate, for example, that the Beneficiary garnered prestigious, recognized awards for his accomplishments or achievements in the field instead of scholarships to further pursue a postdoctoral degree.

Further, in order to show published material about the Beneficiary and his work, the Petitioner offered a single 2015 article from [redacted] that referenced the Beneficiary's Physical Review D article. However, the article never mentions the Beneficiary, which is not indicative of his sustained national or international acclaim from the field. See section 101(a)(15)(O)(i) of the Act and 8 C.F.R. § 214.2(o)(1)(ii)(A)(1). In addition, the Petitioner did not establish how a single article without any discussion of the Beneficiary shows a level of recognition consistent with being among that small percentage who has risen to the very top of the field of endeavor. See 8 C.F.R. § 214.2(o)(3)(ii).

Moreover, while the Petitioner provided a letter from [redacted] generally indicating that the Beneficiary was "highly involved in the planning process" at the [redacted] Accelerator Laboratory and [redacted] Laboratory, the letter does not offer detailed, specific information showing how his capacity or position garnered national or international acclaim from the field. See section 101(a)(15)(O)(i) of the Act and 8 C.F.R. § 214.2(o)(1)(ii)(A)(1). Similarly, the record contains evidence of the Beneficiary's involvement on committees for workshops and forums, such as the "PITT PACC Workshop: [redacted]" However, the Petitioner did not demonstrate how the Beneficiary's participation resulted in wide attention or recognition from the field or how the evidence reflects the Beneficiary's place as being among that small percentage who has risen to the very top of the field. See 8 C.F.R. § 214.2(o)(3)(ii).

The record as a whole, including the evidence discussed above, does not establish the Beneficiary's eligibility for the benefit sought. The Petitioner seeks a visa classification, intended for individuals already at the top of their respective fields, rather than those progressing toward the top. While the Petitioner need not establish that there is no one more accomplished to qualify for the classification sought, the record is insufficient to demonstrate that the Beneficiary has sustained national or international acclaim and is among that small percentage at the very top of his field. See section

101(a)(15)(O)(i) of the Act, 8 C.F.R. § 214.2(o)(1)(ii)(A)(1) and 8 C.F.R. § 214.2(o)(3)(ii). Furthermore, as indicated, the Petitioner seeks to employ the Beneficiary as an assistant professor. However, the submitted evidence relates almost entirely to the Beneficiary's career as a researcher without documentation establishing any acclaim, recognition, or experience as a professor. Accordingly, the Petitioner has not shown the sustained nature of the Beneficiary's national or international acclaim as a researcher or scientist and continuation of that acclaim as an educator.

III. CONCLUSION

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.