U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 6466335

Date: MAR. 24, 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 chemicals, seeks to classify the Beneficiary, a chemist, 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 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. 8 C.F.R. § 214.2(o)(3)(iii)(A)-(B).

On appeal, the Petitioner maintains that the evidence satisfies at least three of the eight regulatory categories of evidence at 8 C.F.R. § 214.2(o)(3)(iii)(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

The Beneficiary received a Ph.D. in Business Administration in 2017 from the University of [redacted] in Virginia, and he has previous training and experience in the field of chemistry, specifically, in the area of plastics in developing [redacted] production technology and additives. His previous work as a chemist included employment as the founder of two Chinese companies, [redacted] and [redacted] before founding the petitioning company. The Petitioner, a New York corporation formed in April 2018, is engaged in the sale and development of high-technology chemicals, such as the [redacted] The Petitioner seeks classification of the Beneficiary as an alien with extraordinary ability in the sciences, specifically in the field of chemistry.

A. 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*). The Director found that the Petitioner did not meet any of the evidentiary criteria at 8 C.F.R § 214.2(o)(3)(iii)(B). On appeal, the Petitioner maintains that the exhibits satisfy six of those criteria. After reviewing all the evidence in the record, we find that the exhibits do not satisfy at least three of the evidentiary criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B). We will analyze the evidence submitted under each of those criteria below.[2]

> *Documentation of the alien's receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor.* 8 C.F.R. § 214.2(o)(3)(iii)(B)(*1*)

The Director determined that the evidence the Petitioner provided did not sufficiently establish that the Beneficiary has received a nationally or internationally recognized prize or award for excellence in the field. For the reasons discussed below, we conclude that the record contains insufficient evidence that these awards were nationally or internationally recognized.

[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] On appeal, the Petitioner does not claim to meet any of the regulatory categories of evidence not discussed in this decision.

The Petitioner submitted documentary evidence that in [redacted] 2018 the Beneficiary's paper titled [redacted] received a first prize Excellent Paper Award from the Organizing Committee of the 15th [redacted] The Petitioner also provided two letters from [redacted] a member of [redacted]'s organizing committee, who states that [redacted] is a "nationwide scientific forum . . . organized by non-governmental agencies" which annually selects "outstanding papers and leading scientific research subjects." She indicates that more than 1,600 projects nationwide were submitted to the 2018 forum, where "the top 5% were honored with the First Prize Outstanding Thesis." She states that a judging panel "including 4 elected members of the National Academy of Natural Sciences (China)" selected winners based on originality, reliability, feasibility, and potential market value.

The Petitioner further submitted documentation showing that in [redacted] 2018 the Beneficiary's paper titled [redacted]" received a Science and Technology Achievement Award from the [redacted]. A letter from [redacted], one of the committee members who evaluated the Beneficiary's application for the [redacted] award, indicates the paper was "outstanding" and in the "top 3% of all applications in the same year."

The Petitioner provided published materials about the 15th [redacted] and [redacted]. A press release from [redacted] describes the 2018 two-day forum as "the most influential exchange in China's scientific and technological community," having "high participation, wide coverage and great social influence." An article titled "The 15th [redacted] published by *Guangming News* indicates that the forum was attended by "more than 900 scientists, technology managers, science and technology experts, and entrepreneurs," and included "more than 20 special events" and "more than 100" expert lectures. A press release from [redacted] indicates that its task is "to promote industrialization of high-tech." Those published materials do not mention the awards the Beneficiary received.

The Petitioner relies primarily on letters and material from the issuing entities. USCIS need not rely on the self-promotional claims of the issuing organizations. *Cf. Braga v. Poulos,* No. CV 06 5105 SJO (C. D. CA July 6, 2007) *aff'd* 2009 WL 604888 (9th Cir. 2009) (USCIS need not rely on the self-promotional material of the publisher in determining whether or not the publication is a professional or major trade journal or other major media). Although the Petitioner also provided the aforementioned article about the 15th [redacted] published by *Guangming News*, as noted previously, the article does not mention the awards the Beneficiary received. The Petitioner did not submit evidence of the national or international *recognition* of the Beneficiary's [redacted] Excellent Paper Award or [redacted] Science and Technology Achievement Award, such as national or widespread local coverage of his award in science or general media. The plain language of this criterion specifically requires that the Beneficiary's award be nationally or internationally *recognized* in the field of endeavor and it is the Petitioner's burden to establish every element of this criterion. The record does not contain documentary evidence showing that the Beneficiary's [redacted] Excellent Paper Award or [redacted] Science and Technology Achievement Award has garnered recognition beyond the presenting organization and is therefore commensurate with a nationally or internationally recognized prize or award for excellence in the field.

In light of the above, the Petitioner did not demonstrate that the Beneficiary satisfies this criterion.

Published material in professional or major trade publications or major media about the alien, relating to the alien's work in the field for which classification is sought, which shall include the title, date, and author of such published material, and any necessary translation. 8 C.F.R. § 214.2(o)(3)(iii)(B)(*3*)

The Petitioner maintains that copies of articles pertaining to the Beneficiary's work in the field satisfy this criterion. The record contains a 2018 article titled "[redacted] published by the *China Chemical Industry News*, which provides that [redacted]'s technology for in-situ [redacted] "passed the test by the Technical Industrialization Research Association," and describes the technology and its benefits. However, this article does not mention the Beneficiary and therefore is not about him. Articles that are not about a beneficiary do not meet this regulatory criterion. *See, e.g., Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at *1, *7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles about a show are not about the actor). We also note that this article does not identify an author.

The Petitioner also submitted a 2018 article titled [redacted] published by the website *Sohu*. As with the previous article, this article does not identify an author and is not about the Beneficiary; it was written about the 2018 symposium on the [redacted] attended by the Beneficiary as chairman of [redacted], as well as representatives of the [redacted] Group, [redacted], the [redacted] Association, and [redacted]. The article mentions that the Beneficiary introduced [redacted]'s [redacted] technology . . . . to establish a cooperative relationship with [redacted] Group to actively promote the practical application of this technology," but the Beneficiary is not otherwise mentioned in the article.

Finally, the Petitioner submitted a press release about the Beneficiary's work titled '[redacted]' from the proceedings of the 15th [redacted] but like the aforementioned articles the press release does not identify the author of the material, as required by the regulations.

In light of the above, the Petitioner did not show that the Beneficiary meets this criterion.

Evidence of the alien's participation on a panel, or individually, as a judge of the work of others in the same or in an allied field of specialization to that for which classification is sought. 8 C.F.R. § 214.2(o)(3)(iii)(B)(4)

The Director determined that the evidence did not sufficiently establish that the Beneficiary has judged the work of others in field. The Petitioner asserts that the Beneficiary satisfies the requirements of this criterion based upon his roles for two organizations, the [redacted] public service center and the [redacted]. The Petitioner provided certificates evidencing the Beneficiary's role for each organization, as well testimonial letters in support of this criterion.

The 2018 certificate from [redacted] titled "Appointment Certificate" indicates that the Beneficiary was "appointed as the Director of the Expert Group for Project Evaluation." The 2018 certificate from [redacted] titled "Letter of Appointment" indicates that the Beneficiary was selected "as the think tank

warehousing expert for public service center of SMEs in [redacted]" The certificates do not, however, demonstrate how those roles equate to having served on a panel, or individually, as a judge of the work of others in the same or an allied field of specialization. Even if those appointment certificates provided evidence of the Beneficiary's anticipated judging duties, this criterion requires not only evidence of appointments to serve as a judge, but also that the Beneficiary actually participated as a judge.

In reference to [redacted], the Petition provided two letters from its vice executive secretary [redacted], indicating that the association's duties include "coordinating with the [redacted] Bureau of Science & Technology to review projects submitted for grants, awards, or patents." In his second letter, [redacted] states that the Beneficiary has been vice president of [redacted] since 2015, and his duties as chief of the [redacted] Project Expert Committee include providing advice and guidance to member companies regarding technical innovation and grant application. [redacted] does not indicate how these roles equate to having served on a panel, or individually, as a judge of the work of others in the same or an allied field of specialization.

Regarding [redacted] the Petitioner submitted two letters from [redacted]s chairman [redacted] indicating that the [redacted] public service center is tasked with the development of small and medium-sized businesses in the city of [redacted] [redacted]'s first letter indicates that [redacted] "retained [the Beneficiary] as Evaluation Committee Expert for Think Tank," a group "scholars, industrial leaders, experienced workers, and government officers . . . providing helpful information to city government." He indicates that as an Evaluation Committee member the Beneficiary "has reviewed the credentials of each applicant and recommended if he/she qualifies to be elected into Think Tank." [redacted] does not indicate how this role equates to having served on a panel, or individually, as a judge of the work of others in the same or an allied field of specialization. [redacted]s second letter asserts that the Beneficiary "participated in the evaluation of the new material group of the Small and Micro Enterprise Innovation Competition as an expert judge" where his duties included "technical appraisal, organizing enterprise innovation competition, quality projects and enterprise selection, etc."

The plain language of this regulation requires evidence demonstrating that the Beneficiary has participated as "a judge of the work of others." The evidence submitted does not demonstrate that in the performance of his role as an "expert judge" in the Small and Micro Enterprise Innovation Competition the Beneficiary actually judged the enterprise innovation proposals and made a final selection for the contest, rather than, for example, merely *organizing* the competition and assisting with developing the selection criteria. The Petitioner did not provide sufficient information about this competition or the Beneficiary's duties in the contest. For instance, the record does not contain documentary evidence showing the specific proposals judged by the Beneficiary, the dates when the selections were made, and the names of those whose proposals he specifically selected. Merely submitting a statement asserting that the Beneficiary was "an expert judge" without evidence showing who he judged and their field of specialization is insufficient to establish eligibility for this criterion.

In addition, the aforementioned assertions in [redacted]s letter that the Beneficiary judged the work of entrants in the Small and Micro Enterprise Innovation Competition do not constitute evidence of the Beneficiary's participation as a judge of the work of others in the field. USCIS need not rely on unsubstantiated claims. *See 1756, Inc. v. U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990) (holding that an agency need not credit conclusory assertions in immigration benefits adjudications); *see also*

Visinscaia v. Beers, 4 F. Supp. 3d 126, 134-135 (D.D.C. 2013) (upholding USCIS' decision to give limited weight to uncorroborated assertions from practitioners in the field). Moreover, if testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B*, 21 I&N Dec. 1136 (BIA 1998). Accordingly, the Petitioner has not demonstrated that the Beneficiary's participation in the [redacted] Small and Micro Enterprise Innovation Competition equates to participation as "a judge" of the work of others in the same or in an allied field.

Based on the foregoing, the Petitioner has not satisfied the requirements of this regulatory criterion.

> *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 provided several letters of recommendation in support of this criterion from the Beneficiary's clients.[3] [redacted], an engineer with the [redacted] Group, states that his company has utilized the Beneficiary's technology for several years "and has obtained enormous economic benefit." [redacted] the chief engineer of the research and development center of [redacted] indicates he utilized [redacted] additives and achieved "a significant improvement in the [redacted] and [redacted] products."

On appeal, the Petitioner provides additional testimonial letters from the Beneficiary's mentors and clients reporting favorable results from utilizing his [redacted] technology and [redacted] additive. [redacted], the chief production manager for [redacted] found that the Beneficiary's [redacted] technology produced [redacted] at increased profit with a reduction in lead salt. [redacted] the general manager of Hungary's [redacted] obtained "positive experimental results" regarding [redacted] using the [redacted] additive. [redacted] the deputy general manager of [redacted] states that "[i]mplementation of [the Beneficiary's] novel techniques in our company confirms that the [redacted] produced by [redacted] technology has more stable [redacted] better [redacted] stability and [redacted] stability, and can be used [with] less or even without [redacted] . . . ." He asserts that, "based on our experimental results . . . . [the Beneficiary's] novel techniques will enormously benefit the U.S. [redacted] . . . ." [redacted] of [redacted] indicates that in 2016 his company participated "in a national research project undertaken by [redacted]" conducting experimental tests of [redacted] additives, which resulted in an increased [redacted] rate, an increased [redacted] stability of the [redacted] production efficiency, and economic benefits. He asserts that the application of the Beneficiary's technology "in large-scale production is completely feasible." [redacted] the deputy general manager of [redacted] indicates that after his company's production experiment with [redacted] "the yellowing in the [redacted] no longer appeared, and the quality of the [redacted] has been significantly improved." [redacted] the Petitioner's market representative for Europe and the Middle East, indicates that the [redacted] additive has a "great impact" on the stability of [redacted]

[3] While we discuss only a sampling of the letters submitted, we have reviewed and considered each one.

In order to satisfy this criterion, a petitioner must establish not only that a beneficiary has made original contributions but that they have been of major significance in the field. For example, it may support the record with evidence that a beneficiary's contributions have been widely implemented, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance in the field. Demonstrating ability as a skilled chemist in the [redacted] is not itself a contribution of major significance; rather, the Petitioner must demonstrate that the Beneficiary has impacted the field as a whole. *Cf. Visinscaia*, 4 F. Supp. 3d at 134-135 (upholding a finding that a ballroom dancer had not met a similar criterion in the regulations pertaining to immigrants of extraordinary ability because she did not demonstrate her impact in the field as a whole).

The record does not include documentary evidence showing the widespread implementation of the Beneficiary's work, that it has been seminal, or that it otherwise equates to an original contribution of major significance in the field. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International,* 19 I&N Dec. 791, 795 (Comm'r 1988). However, USCIS is ultimately responsible for making the final determination regarding an individual's eligibility for the benefit sought. *Id.* Here, the preceding letters of recommendation demonstrate that the Beneficiary is admired for his skills in the field, and that his work on projects has benefited his clients and earned the respect and admiration of those with whom he has collaborated and consulted. However, those letters do not establish that he has made original science-related contributions of major significance in his field.

The Petitioner further submitted documentation indicating that the Beneficiary is the lead inventor on a non-provisional U.S. patent application filed by [redacted] and titled [redacted]." The Petitioner also provided evidence that the Beneficiary is the lead inventor on two utility patents in China, one filed by [redacted] titled [redacted] and the another titled "[redacted]", [redacted], the Beneficiary's professor at [redacted] University of China, asserts that the Beneficiary's patents pertaining to the [redacted] process are of great technical, economic, and environmental value, and "will enormously contribute to the U.S. [redacted]." However, a patent primarily recognizes the originality of the idea, but it does not demonstrate that the Beneficiary made a contribution of major significance in the field. In this case, while the evidence submitted demonstrates the Beneficiary's research is original, it does not establish how his research has contributed to the field as a whole. In addition, regarding the aforementioned statements of [redacted] and [redacted] of the potential benefit of the Beneficiary's research to the U.S. [redacted], speculation as to potential future contributions cannot establish that the Beneficiary has already contributed to the field.

Based on the above, the Petitioner has not established the Beneficiary's eligibility under this criterion.

> *Evidence of the alien's authorship of scholarly articles in the field, in professional journals or other major media.* 8 C.F.R. § 214.2(o)(3)(iii)(B)(*6*)

The Director found that the Petitioner did not satisfy this criterion. However, we find sufficient documentary evidence to establish that the Beneficiary authored scholarly articles, published in the [redacted] 2018 edition of the journal *China Chlor-Alkali* and the proceedings of the 2018 [redacted]

[redacted] Technology annual conference of the [redacted] Association [redacted], and the Director's determination on this issue will be withdrawn.

In light of the above, the Petitioner has established that the Beneficiary meets this criterion.

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

On appeal, the Petitioner maintains that the Beneficiary has been employed in a critical or essential capacity by [redacted] and [redacted]. The Director determined that the evidence the Petitioner provided did not met this regulatory criterion. The record establishes the Beneficiary's role as a founder of [redacted] and [redacted] which may be categorized as providing services in a critical or essential role for those organizations. However, the Petitioner did not establish that [redacted] or [redacted] is or was a company with a distinguished reputation, as required by this criterion.

The Petitioner provided a 2015 press release from [redacted] titled "[redacted]" published by the website www.ccaon.com, announcing that the company "introduced the development of the [redacted] technology" and describing the technology and its benefits. A letter from [redacted]'s executive director, indicates that the company is "in a period of rapid development," and that its polishing technology and products have been supplied "to mobile phone and camera industries" and to large enterprises such as [redacted], [redacted] and [redacted]."

The record also contains a [redacted] 2018 press release titled "[redacted]," published by the website www.qd.ifeng.com. That article indicates that [redacted] "the only company in China that produces [redacted] auxiliaries with [redacted]" was the recipient of 5 million yuan in angel investment from a fund created by the city government of [redacted] to "focus on the establishment of innovative enterprises with less than 36 months of investment." A letter from [redacted]'s vice president, indicates that the company "attracted three big Chinese government investment companies," and he relates some of the products and services it provides to its clients.

The statements in the aforementioned press releases and testimonials are not sufficient to meet this criterion, because they do not refer to the organizations' reputations, nor does the record establish that coverage of the organizations' projects by those websites reflects a distinguished reputation. The record does not contain corroborating documentary evidence in the form of articles in newspapers, trade journals, publications or testimonials pertaining to the reputation of those companies. In addition, although the press release and testimonial pertaining to [redacted] acknowledges its current stage of development, they do not establish that it has a distinguished reputation in the field. Further, the fact that [redacted] attracted 5 million yuan from an investor as a startup company does not constitute evidence regarding [redacted]S reputation.

Based on the above, the Petitioner has not established the Beneficiary's eligibility under this criterion.

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.