U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33412453

Date: SEP. 19, 2024

Appeal of Vermont Service Center Decision

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

The Petitioner, an international management consulting firm, seeks to classify the Beneficiary 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]

> *Published material in professional or major trade publications or other 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 claims the Beneficiary's eligibility for this criterion based on the Beneficiary's authorship of scholarly articles in professional publications, and the reference and citation of the Beneficiary's work by others in their published works. At the outset, the O-1 nonimmigrant regulations provide separate criteria for these eligibility claims. Specifically, the regulation at 8 C.F.R. § 214.2(o)(3)(B)(iii)(*6*) provides "[e]vidence of the alien's authorship of scholarly articles in the field, in professional journals, or other major media," which the Director determined the Beneficiary met. Moreover, the reference and citation of an individual's work by others in their own published work is evaluated under the regulation at 8 C.F.R. § 214.2(o)(3)(B)(iii)(*5*), requiring "[e]vidence of the alien's original scientific, scholarly, or business-related contributions of major significance in the field," which we will consider later in this decision.[3]

For this criterion, the Petitioner must demonstrate published material "about the alien, relating to the alien's work in the field for which classification is sought."[4] Because the Beneficiary's published

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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) (instructing that documentation reflecting published research 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).

[4] *See generally* 2 *USCIS Policy Manual*, *supra*, at M.4(C)(2) (providing that published material that includes only a brief citation or passing reference to the beneficiary's work is not "about" the beneficiary, relating to the beneficiary's work in the field, as required under this criterion).

research and articles citing to the Beneficiary's work are not "about the alien," they do not meet the plain language of this regulatory criterion.

Accordingly, the Petitioner did not show that the Beneficiary fulfills this 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).

Analysis under this criterion focuses on whether the beneficiary's original work constitutes major, significant contributions in the field.[5] The Petitioner argues the Beneficiary's eligibility for this criterion based on her "authored publications that have been published in massively impactful professional 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.[6] 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. Following this argument, any person whose paper was published in a "massively impactful professional journal," would establish a contribution of major significance, regardless of the paper's impact, influence, or effect in the field. 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.

Further, the Petitioner contends that the Petitioner's work "has been cited multiple times." The record reflects the Petitioner submitted evidence of the Petitioner's citations from Google Scholar. 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.[7] Here, the Petitioner has not shown how the Beneficiary's citation figures 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 her citations are unusually high in her 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 her individual articles represent majorly significant contributions in the field.

Finally, the Petitioner asserts the submission of testimonial letters established the Beneficiary's contributions of major significance. In general, the letters recount the Beneficiary's research and findings and indicate their publications in journals or citation by others. Although they reflect the novelty of her 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

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

required by this regulatory criterion. For instance, the letter from Dr. C-A-F- stated that the Beneficiary "investigated severe vision loss caused by abnormal blood vessel growth in eye conditions such as wet age-related macular degeneration, diabetic retinopathy, and retinopathy of prematurity," and "[t]hese findings present the inhibition of NCK1/2-dependent pericyte migration as an attractive new treatment strategy for retinopathy."[8] Although the letter describes the Beneficiary's research and indicate the findings, the letter does not further elaborate and describe how the Beneficiary's research or work has significantly influenced the field in a major way.

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.[9] 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.[10] 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 her 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*).

The Petitioner argues the Beneficiary's eligibility for this criterion based on her "critical roles" for the [redacted]

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.[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]

As it relates to [redacted] the Petitioner references a letter from Dr. A-E- who indicated the Beneficiary served as a "Ph.D. research assistant" and "played a pivotal role in fulfilling this mission by constantly generating novel ideas and producing solid research data," and "[h]er work not only expanded our understanding of signaling pathways controlling vascular development but also contributed to

[8] Although we discuss a sampling letter, we have reviewed and considered the other submitted letters, which contain the same broad statements without specifically explaining how the Beneficiary's work is considered in the field to be majorly significant.
[9] *See generally* 2 *USCIS Policy Manual*, *supra*, at M.4(C)(2).
[10] *Id.*
[11] *See generally* 2 *USCIS Policy Manual*, *supra*, at M.4(C)(2).
[12] *Id.*
[13] *Id.*

translating research findings into practical applications for improving human health." Regarding [redacted] the Petitioner references a letter from Dr. C-G- who indicated the Beneficiary served as a "Research Fellow in Neurobiology" and "managed to use the AAV and mouse genetic platform in my lab and achieved screening of 5 candidate genes," and "[t]his finding is essential for building and continuing her project and will be followed up by other researchers to unreal the novel mechanism."

Neither letter provides specific, detailed information explaining how the Beneficiary contributed in a way that was of significant importance to [redacted] While the letters briefly discuss her involvement in research with the center or laboratory as a Ph.D. research assistant or research fellow,[14] they do not elaborate or articulate how the Beneficiary's contributions affected the respective activities at a level of a critical capacity consistent with this regulatory criterion.[15]

Without further information explaining the critical nature of the Beneficiary's contributions to [redacted] the Petitioner did not establish the Beneficiary satisfies 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).[16] Accordingly, we reserve this issue.[17] 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.[18]

ORDER: The appeal is dismissed.

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[14] *See generally* 2 *USCIS Policy Manual*, *supra*, at M.4(C)(2) (providing examples of employment in a critical or essential capacity, such as a senior faculty or senior research position for a distinguished academic department or program or a senior research position for a distinguished non-academic institution or company).

[15] *Id.* (stating that detailed letters from persons with personal knowledge of the significance of the beneficiary's role can be particularly helpful in analyzing this criterion).

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

[17] *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).

[18] Electronic records reflect that USCIS previously approved an immigrant petition for the Beneficiary as an individual of extraordinary ability under section 203(b)(1)(A) of the Act. However, based on the record before us and for the reasons discussed in this decision, the Petitioner did not establish eligibility for this nonimmigrant classification.