U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF T-S-, INC.

DATE: MAY 31, 2016

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a medical technology company, seeks to classify the Beneficiary, a research scientist, as an outstanding researcher. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(B), 8 U.S.C. § 1153(b)(1)(B). This first preference classification makes immigrant visas available to foreign nationals who can demonstrate that they are recognized internationally as outstanding in their academic field.

The Director, Nebraska Service Center, denied the petition. The Director concluded that while the Beneficiary had served as a peer reviewer, demonstrated original research contributions to the academic field, and authored published articles, those accomplishments did not demonstrate that he was recognized internationally as outstanding in the field.

The matter is now before us on appeal. In its appeal, the Petitioner states that the Director erred in concluding the Beneficiary was not recognized internationally as outstanding in his research field.

Upon *de novo* review, we will sustain the appeal.

I. LAW

Section 203(b)(1)(B) of the Act describes eligible foreign nationals as follows:

> (i) the alien is recognized internationally as outstanding in a specific academic area,
>
> (ii) the alien has at least 3 years of experience in teaching or research in the academic area, and
>
> (iii) the alien seeks to enter the United States –
>
> > (I) for a tenured position (or tenure-track position) within a university or institution of higher education to teach in the academic area,
> >
> > (II) for a comparable position with a university or institution of higher education to conduct research in the area, or

> (III) for a comparable position to conduct research in the area with a department, division, or institute of a private employer, if the department, division, or institute employs at least 3 persons full-time in research activities and has achieved documented accomplishments in an academic field.

The implementing regulation requires that a petition for an outstanding professor or researcher demonstrate that the individual "is recognized internationally as outstanding in the academic field specified in the petition" and must include initial evidence that meets at least two of the six criteria listed at 8 C.F.R. § 204.5(i)(3)(i). If a petitioner submits the required initial evidence, we then consider the totality of the record to determine if it establishes that the beneficiary is recognized internationally as outstanding in the relevant field. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (holding that the "truth is to be determined not by the quantity of evidence alone but by its quality" and that we examine "each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true"); *see also Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the evidence is first counted and then, if satisfying the required number of criteria, considered in the context of a final merits determination).[1]

Furthermore, the regulation at 8 C.F.R. § 204.5(i)(3)(ii) provides that a petition for an outstanding professor or researcher must be accompanied evidence that the foreign national has at least three years of experience in teaching and/or research in the academic field. In addition, experience in teaching or research while working on an advanced degree will only be acceptable if the individual has acquired the degree, and if the teaching duties were such that he or she had full responsibility for the class taught or if the research conducted toward the degree has been recognized within the academic field as outstanding. *Id.*

II. ANALYSIS

A. Initial Evidence

The Petitioner designs, develops, manufactures, markets, and services image-directed robotic systems for orthopedic surgery. At the time of filing the Form I-140, Immigrant Petition for Alien Worker, the Beneficiary worked for the Petitioner as a research scientist. The Director determined that the Beneficiary had met the categories of evidence at 8 C.F.R. § 204.5(i)(3)(i)(D), (E), and (F). The record supports the Director's findings. Accordingly, the Petitioner has submitted the requisite initial evidence for the Beneficiary that satisfies at least two of the six regulatory criteria.

[1] The immigrant visa classification at issue in *Kazarian,* section 203(b)(1)(A) of the Act, requires qualifying evidence under three criteria whereas the classification at issue in this matter, section 203(b)(1)(B) of the Act, requires qualifying documentation under only two criteria.

B. Final Merits Determination

As the Petitioner has provided documentation for the Beneficiary that met the initial evidentiary requirement, the next step is a final merits determination that considers whether the record supports a finding that the Beneficiary is recognized internationally as an outstanding researcher in his academic field. *See* section 203(b)(1)(B)(i) of the Act; 8 C.F.R. § 204.5(i)(3)(i). The documentation in the aggregate must be commensurate with international recognition.

The Beneficiary's participation as a judge of the work of others is indicative of his international recognition as a researcher. He has peer-reviewed articles for the the and In addition to letters of support from editorial staff explaining their selection process for peer reviewers, the record includes rankings from and reflecting the international stature of and the and The Beneficiary's peer review of a significant number of articles for prominent international conferences and a distinguished journal is consistent with being recognized internationally as outstanding in the academic area.

Furthermore, the Petitioner provided documentary evidence showing that the Beneficiary has authored a substantial number of articles in journals with international circulation, including The Beneficiary's scholarly articles have garnered an extensive number of citations internationally, some of which apply and build upon his work. *See Kazarian*, 596 F.3d at 1121 (citations may be relevant to the final merits determination).

The Petitioner also submitted reference letters from experts in the field, detailing the Beneficiary's specific contributions and explaining how those contributions are important to the academic field. For example, is associate director of the and co-director of the at indicated that the Beneficiary was the principal investigator and developer of the computational anatomy gateway for the "which provides shape analysis tools to researchers in neuroscience and cardiac imaging." In addition, stated that the Beneficiary's computational anatomy gateway has had a "global" impact because it has been utilized by "top universities, hospitals, and medical research centers all over the world." Similarly, executive director of the at noted that the Beneficiary developed "groundbreaking shape analysis tools through [the] computational anatomy gateway to study the anatomical changes of the human brain." further explained that the Beneficiary's "work would later help progress countless non-invasive studies focusing on numerous neurodegenerative diseases."

senior director of operations for and associate editor of stated:

> [The Beneficiary's] previous work in the area of rotationally invariant image analysis of 3D volumetric images is one of the few successful approaches to tackling this extremely challenging and computationally expensive problem. Because of his research, there have been significant improvements to early detection of certain neurodegenerative and cardiovascular diseases and active robot assisted surgical procedures for hip and knee replacement.

In addition, a professor of mathematics at the indicated that the Beneficiary's "research led to a novel approach to rotationally invariant 3D texture classification, which will ultimately lead to more effective medical imaging machines." Another expert reference, a professor of bioengineering at the noted that the Beneficiary's research "has had a significant impact on our research community in the areas of multi-resolution analysis and the related wavelet transforms." further explained that his team "used the results of [the Beneficiary's] research to illustrate the specification of wavelet and scaling generating functions that lead to ." Lastly, an associate professor of mathematics at the stated the Beneficiary's work has offered "a simpler proof of the theorems known as " added that the Beneficiary's "generalization and simpler proof with less restrictive conditions on the associated filters has inspired further work in this area" and has been applied by others in the field.

While we need not accept unsubstantiated claims, the documentation of record, including evidence not discussed in this decision, supports the aforementioned references' statements concerning the Beneficiary's original scientific contributions and his international recognition in the research field. Thus, in light of the evidence discussed above and other corroborating evidence of record, the Beneficiary's achievements in the aggregate are commensurate with being recognized internationally as outstanding in the academic field.

III. CONCLUSION

The record demonstrates that the Beneficiary meets at least two of the six criteria listed at 8 C.F.R. § 204.5(i)(3)(i). In addition, the Petitioner has shown that the evidence of the Beneficiary's achievements is consistent with that of an individual who is internationally recognized as an outstanding researcher. Based on the evidence submitted, the Petitioner has established that the Beneficiary qualifies under section 203(b)(1)(B) of the Act as an outstanding researcher.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the Petitioner has met that burden.

ORDER: The appeal is sustained.

Cite as *Matter of T-S-, Inc.*, ID# 16741 (AAO May 31, 2016)