



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 24187995

Date: FEB. 21, 2023

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Outstanding Professors/Researchers)

The Petitioner, a smartphone technologies company, seeks to classify the Beneficiary as an outstanding professor or researcher. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(B), 8 U.S.C. § 1153(b)(1)(B).

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner did not establish, as required, that the Beneficiary is internationally recognized as outstanding in his academic field. The matter is now before us on appeal.

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

Section 203(b)(1)(B) of the Act provides that an individual is an outstanding professor or researcher if:

- (i) the individual is recognized internationally as outstanding in a specific academic area,
- (ii) the individual has at least 3 years of experience in teaching or research in the academic area, and
- (iii) the individual seeks to enter the United States [for a qualifying position with a university, institution of higher education, or certain private employers].

To establish a professor or researcher's eligibility, a petitioner must provide initial qualifying documentation that meets at least two of six categories of specific objective evidence set forth at 8 C.F.R. § 204.5(i)(3)(i)(A)-(F). This, however, is only the first step, and the successful submission of evidence meeting at least two criteria does not, in and of itself, establish eligibility for this

classification. When a petitioner submits sufficient evidence at the first step, we will then conduct a final merits determination to decide whether the evidence in its totality shows that the beneficiary is internationally recognized as outstanding in their academic field.¹ 8 C.F.R. § 204.5(i)(3)(i).

II. ANALYSIS

The Beneficiary received a Master of Science degree in Electrical and Computer Engineering from [redacted] Institute in 2013 and a Ph.D. in Electrical and Computer Engineering from the University [redacted] in 2019. He served as a Senior Radio Frequency Integrated Circuit (RFIC) Research Design Engineer at [redacted] from July 2019 until August 2021. The Beneficiary has been employed as a Senior Staff Research Engineer with the Petitioner since September 2021.

A. Evidentiary Criteria

In his decision, the Director found that the Beneficiary met two of the evidentiary criteria at 8 C.F.R. § 204.5(i)(3)(i)(A)-(F), thus satisfying the initial evidence requirement, but that the totality of the record did not establish the requisite international recognition in his field.² Upon review, we conclude that the evidence demonstrates the Beneficiary's service as a judge of the work of others, original scientific or scholarly research contributions to the academic field, and authorship of scholarly articles.³ As he therefore meets the initial evidence requirements, we will consider all the evidence of record when conducting the final merits determination.

B. Final Merits Determination

In a final merits determination, we analyze a researcher's accomplishments and weigh the totality of the evidence to evaluate whether a petitioner has demonstrated, by a preponderance of the evidence,⁴

¹ USCIS has confirmed the applicability of this two-step analysis to evaluate the evidence submitted with the petition to demonstrate an individual's eligibility for classification as an outstanding professor or researcher in their academic field. See 6 USCIS Policy Manual F.3(B), <https://www.uscis.gov/policy-manual>. Academic field means "a body of specialized knowledge offered for study at an accredited U.S. university or institution of higher education." See 8 C.F.R. § 204.5(i)(2). By regulatory definition, a body of specialized knowledge is larger than a very small area of specialization in which only a single course is taught or that is the subject of a very specialized dissertation. For example, it would be acceptable to conclude that a beneficiary is an outstanding professor or researcher in particle physics rather than physics in general, as long as it has been demonstrated that the claimed field is "a body of specialized knowledge offered for study at an accredited United States university or institution of higher education." See 6 USCIS Policy Manual, *supra*, at F.3(B).

² The Director determined that the Beneficiary satisfied the regulatory criteria at 8 C.F.R. § 204.5(i)(3)(i)(E) and (F).

³ We agree with the Petitioner's arguments on appeal that the Director's first-step analysis of the regulatory criteria at 8 C.F.R. § 204.5(i)(3)(i)(A), (C), and (D) included several problematic statements. For example, with respect to the major prizes or awards criterion at 8 C.F.R. § 204.5(i)(3)(i)(A), the language of the regulation does not require "internationally recognized prizes or awards" as indicated in the Director's decision. In addition, regarding the judging criterion at 8 C.F.R. § 204.5(i)(3)(i)(D), the language of the regulation does not require "international recognition" as stated by the Director. The Director's statements requiring evidence of international recognition are relevant to the final merits determination and not the first-step evaluation of the aforementioned regulatory criteria.

⁴ A petitioner must establish that the beneficiary meets the eligibility requirements of the benefit sought by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. at 375-76. In other words, a petitioner must show that what it claims is "more likely than not" or "probably" true. To determine whether a petitioner has met its burden under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Id.* at 376; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989).

that the beneficiary's achievements are sufficient to demonstrate that he has been internationally recognized as outstanding in the field of endeavor. *See* section 203(b)(1)(B)(i) of the Act; 8 C.F.R. § 204.5(i)(3)(i). In this matter, we agree with the Director that the Petitioner has not shown the Beneficiary's eligibility.⁵

On appeal, the Petitioner submits a brief asserting that the Director overlooked or did not properly evaluate evidence in the record, and that this evidence establishes that the Beneficiary qualifies under the high standards of this immigrant visa classification. It contends that the Director did not properly analyze the Beneficiary's awards, peer review service, authorship of scholarly articles and patents, letters of support, and published material about his work (citations). The Petitioner further argues that the Beneficiary's Google Scholar profile listing 71 citations shows his "widespread influence."

It is important to note that the controlling purpose of the regulation at 8 C.F.R. § 204.5(i)(3)(i) is to establish a beneficiary's international recognition, and any evidence submitted to meet these criteria must therefore be to some extent indicative of international recognition. Therefore, to the extent that the Director first determined that the evidence satisfied the plain language requirements of two specific evidentiary criteria (relating to research contributions and authorship of scholarly articles), and then evaluated whether that evidence, as part of the entirety of the record, was sufficient to demonstrate the Beneficiary's recognition as outstanding at the international level, his analysis for those two criteria was in keeping with the statute, regulations, and policy pertaining to the requested immigrant visa classification.

As it pertains to the Beneficiary's participation as a judge of the work of others, the Petitioner submitted evidence indicating that he has peer reviewed six papers for *IEEE Transactions on Circuits and Systems II: Express Briefs* since 2018. An evaluation of the significance of the Beneficiary's judging experience is appropriate to determine if such evidence is indicative of the outstanding achievement required for this classification.⁶ In many scientific and academic fields, peer review is a routine part of the process through which articles are selected for publication or presentation at conferences. Participation in the peer review process does not automatically demonstrate that an individual is internationally recognized as outstanding in his academic field. Here, the Petitioner has not established that the level of the Beneficiary's participation as a reviewer of manuscripts is indicative of or consistent with being recognized internationally as outstanding in his academic area.⁷

At issue here is the extent to which the Beneficiary's peer review activities have required, reflected, or resulted in him being recognized internationally as outstanding in his field. The Petitioner, however, did not present documentation indicating the aforementioned journal's specific requirements for selection of peer reviewers. For instance, reviewing manuscripts for journals or conferences that select

⁵ In the final merits analysis, the Director's decision discussed the documentation relating to the Beneficiary's research contributions, patent applications, published work, and citation evidence, and explained why that evidence, as part of the entirety of the record, was insufficient to demonstrate the Beneficiary's recognition as outstanding at the international level.

⁶ *See* 6 USCIS Policy Manual, *supra*, at F.3(B)(1) (stating that a beneficiary's participation as a judge should be evaluated to determine whether it was indicative of the beneficiary being recognized internationally as outstanding in a specific academic area).

⁷ For example, the record does not contain evidence demonstrating that the specific journal that invited the Beneficiary to serve as a peer reviewer reserves its invitations for researchers who are recognized internationally as outstanding in the academic field.

his findings have affected the integrated circuits industry, have been widely utilized in the electrical engineering field, or have otherwise influenced his field at a level commensurate with being internationally recognized as outstanding.

Furthermore, [redacted] an associate professor at [redacted] University, stated that the Beneficiary “proposed a unique multiphase controller to directly control a power amplifier for high phase/gain resolution with reduced loss by performing a vector addition of the beam phase and amplitude.” While [redacted] asserted that the Beneficiary’s controller “allows for beamforming operation at higher efficiency and linearity and provides more flexibility to transmit the signal directionally,” the record does not show that the Beneficiary’s work has had a meaningful impact in the academic field or has otherwise risen to the level of a contribution that is recognized internationally as outstanding. Similarly, [redacted] a professor at [redacted] Universiteit [redacted] Belgium, indicated that the Beneficiary’s “fully digital transmitter beamforming system achiev[es] low phase resolution and low gain error with high output power and system efficiency,” but he did not provide specific examples indicating that the Beneficiary’s work has affected the field of electrical engineering in a substantial way that signifies international recognition or outstanding achievement in the academic field.

The Petitioner argues that the aforementioned letters show “the Beneficiary’s overall ‘outstanding’ reputation and international acclaim within the field.” The letters of support offered by the Petitioner, however, do not contain sufficient information and explanation, nor does the record include adequate corroborating evidence, to show that the Beneficiary’s work is viewed by the overall academic field, rather than by the references he selected, as substantially influential or otherwise indicative of international recognition.

The Petitioner also maintains that the Beneficiary’s publication record shows that he is internationally recognized as outstanding. It claims that the Beneficiary has authored multiple articles in highly ranked journals and conferences. A high ranking is reflective of a publication’s overall citation rate. It does not, however, show the influence of any particular author or demonstrate how an individual’s research has had an impact within the field. Further, the evidence in the record does not establish that publication in a journal or conference with a high ranking alone is sufficient to demonstrate that a beneficiary is recognized internationally as outstanding in the academic field. As authoring scholarly articles is often inherent to the work of professors 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 his articles demonstrate that he is internationally recognized as outstanding in the academic field.¹²

The Petitioner submitted the Beneficiary’s Google Scholar profile showing that 19 of his research articles had received 71 cumulative citations.¹³ This Google Scholar information also indicated that the Beneficiary’s four highest cited articles, entitled [redacted] (2018), [redacted] (2019), [redacted] (2019), and [redacted]

¹² See 6 USCIS Policy Manual, *supra*, at F.3(B)(1) (stating that a beneficiary’s authorship of books or articles should be evaluated to determine whether they were indicative of the beneficiary being recognized internationally as outstanding in a specific academic area).

¹³ We note that all 19 of the Beneficiary’s research articles were coauthored with his Ph.D. advisor, [redacted]

[redacted] (2017) each received 19, 13, 10, and 6 citations, respectively. The Beneficiary's remaining 15 articles each received five citations or less. The Petitioner did not specify how many citations for each of these individual articles were self-citations by the Beneficiary or his coauthors. Regardless, without comparative statistical evidence indicating how often others in the Beneficiary's field are cited, the Petitioner has not demonstrated that the number of citations received by his publications represents interest at a level consistent with outstanding achievement in the academic field.

Additionally, the Petitioner submitted examples of some of the research articles, including international articles, which cited to the Beneficiary's work.¹⁴ For instance, an article authored by [redacted] entitled [redacted] cites to the Beneficiary and [redacted] paper, entitled [redacted]. The article's author identified the Beneficiary and [redacted] paper, stating: [redacted]. The author further explained: [redacted]. This article does not distinguish or highlight the Beneficiary's work from the 20 other papers referenced in the article.

Another research article published by [redacted] entitled [redacted] cites to two of [redacted] papers, entitled [redacted] (2017) and [redacted] (2018).¹⁵ The authors referenced the aforementioned two papers stating that the [redacted] has been introduced" as a way to overcome drawbacks to the quadrature architecture, including "decreased power efficiency and output power." The authors go on to state, however, that "there is no present implementation of the [redacted] supporting very wide bandwidth." This article does not differentiate the Beneficiary and [redacted] 2018 paper from the 47 other papers referenced in the article or otherwise demonstrate that the Beneficiary's work is outstanding. The Petitioner has not established how citations of this kind translate into international recognition or outstanding achievement.

The remaining research article examples presented by the Petitioner generally discuss the cited source articles in similar terms and there is no special emphasis on the Beneficiary's work. The submitted articles acknowledge his contributions to the advancement of what appears to be an active field of research but are not indications that the Beneficiary has been recognized internationally as outstanding in the academic field.

While the Beneficiary's citations, both individually and collectively, show that the field has taken some notice of his work, the Petitioner has not established that the number of citations received by his

¹⁴ These articles which cite to the Beneficiary's work are primarily about the authors' own research, and not the Beneficiary's work. As such, they do not constitute published material about the Beneficiary's work. See 8 C.F.R. § 204.5(i)(3)(i)(C).

¹⁵ While [redacted] latter paper from 2018 was coauthored with the Beneficiary, his initial paper from 2017 introducing the [redacted] did not include the Beneficiary as an author.

published and presented work is sufficient to demonstrate a level of attention commensurate with being recognized internationally in his field. *See* section 203(b)(1)(B)(i) of the Act. Nor has the Petitioner shown that the number of citations to the Beneficiary's work represents interest at a level consistent with outstanding achievement in the academic field.

The Petitioner also submitted evidence that the Beneficiary and [] have coauthored two U.S. patents and one U.S. patent application. While a patent recognizes the originality of an idea, it does not by itself demonstrate that the inventor has made a research contribution to the academic field that signifies international recognition or outstanding achievement. Rather, the significance of the innovation must be determined on a case-by-case basis. Here, the Petitioner provided documentation showing that one of the Beneficiary and [] patents has been listed as a cited reference on another research team's U.S. patent, but this evidence does not show in what ways the Beneficiary's invention has advanced the state of research in the academic field or explain how the Beneficiary's work has affected the wider field beyond this one team of researchers who referenced his patent. The Petitioner has not established that the Beneficiary's patented inventions have had an impact that is internationally recognized as outstanding in the electrical engineering field.

Furthermore, the record includes documentation indicating that the Beneficiary and [] presented their work at both the 2017 and 2019 IEEE [] Symposium.¹⁶ The Petitioner did not, for example, provide evidence from the symposium organizer that invited the Beneficiary to participate indicating that it reserves its invitations for researchers who are recognized internationally as outstanding in the academic field. The Beneficiary's participation in this symposium demonstrates that his research findings were shared with others in his field, but without documenting broader impact of his presented research, such participation is not sufficient to show that his work is recognized internationally as outstanding in the academic field.

In addition, the Petitioner submitted information from the National Science Foundation (NSF) showing that [] (the "Principal Investigator") received funding from the [] [] Program to conduct research at the University []¹⁷ With regard to the Beneficiary's participation in [] research project that was funded by the NSF's [] Program, we note that a substantial amount of scientific programs are funded by grants from a variety of public and private sources. The past achievements of the principal investigator (such as []) are a factor in grant proposals because the funding institution has to be assured that the investigator is capable of performing the proposed research. Nevertheless, the Petitioner has not

¹⁶ The Petitioner claims on appeal that the Beneficiary's presentation at the IEEE [] Symposium is documentation of his receipt of a major prize or award for outstanding achievement in the academic field. *See* 8 C.F.R. § 204.5(i)(3)(i)(A). Giving an oral conference presentation, however, does not constitute receipt of a major prize or award for outstanding achievement in the academic field. While the Petitioner submitted information from the 2017 IEEE [] Symposium showing that its organizers specifically recognized attendees with "Student Paper Awards, [] Award, and [] Award," there is no indication that the Beneficiary received a specific prize or award at this conference.

¹⁷ The Petitioner contends on appeal that this funding from the NSF is documentation of the Beneficiary's receipt of a major prize or award for outstanding achievement in the academic field. *See* 8 C.F.R. § 204.5(i)(3)(i)(A). The record, however, does not include evidence from the NSF identifying the Beneficiary as an "awardee" or stating that its award was given based on the Beneficiary's outstanding achievement in the field. Instead, the information from the NSF only identifies the Beneficiary as a coauthor on one of [] eleven "publications produced as a result of this research."

demonstrated that the Beneficiary's participation in an NSF-funded research project renders him internationally recognized as outstanding in the academic field.

Although the evidence indicates that the Beneficiary is a skilled electrical engineering researcher, the Petitioner has not established that he stands apart in the academic field through outstanding achievement and international recognition. After consideration of the totality of the evidence of the Beneficiary's work in the areas of RFIC design and digital transmitters, including evidence of his research articles, citations to those articles by others in the field, his peer review service and patents, and the opinions of experts in the field, we conclude that this documentation does not sufficiently establish that he has been internationally recognized as an outstanding researcher in the field.

C. O-1 Nonimmigrant Status

The record reflects that the Beneficiary previously received O-1 status, a classification reserved for nonimmigrants of extraordinary ability. Although USCIS has approved at least one O-1 nonimmigrant visa petition filed on behalf of the Beneficiary, the prior approval does not preclude USCIS from denying an immigrant visa petition which is adjudicated based on a different standard – statute, regulations, and case law. Many Form I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. *See, e.g., Sunlift Int'l v. Mayorkas, et al.*, 2021 WL 3111627 (N.D. Cal. 2021); *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108, *aff'd*, 905 F. 2d at 41. Furthermore, our authority over the USCIS service centers, the office adjudicating the nonimmigrant visa petition, is comparable to the relationship between a court of appeals and a district court. Even if a service center director has approved a nonimmigrant petition on behalf of an individual, we are not bound to follow that finding in the adjudication of another immigration petition. *See La. Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, at *2 (E.D. La. 2000).

III. CONCLUSION

The evidence demonstrates that the Beneficiary meets at least two of the evidentiary criteria at 8 C.F.R. § 204.5(i)(3)(i)(A)-(F), and thus the initial evidence requirements for this classification. A review of the totality of the evidence, however, does not establish that the Beneficiary is internationally recognized as an outstanding professor or researcher in the academic field. 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.