



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

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

MATTER OF Q-, INC.

DATE: MAR. 27, 2019

APPEAL OF VERMONT SERVICE CENTER DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner, a consumer audio electronics company, seeks to temporarily employ the Beneficiary as its Chief Executive Officer (CEO). 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 business and 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 the regulatory requirements and thus the Beneficiary is eligible for O-1 classification.

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). And if the petitioner demonstrates that the listed criteria do not readily apply to the beneficiary's occupation, it may submit comparable evidence to establish eligibility. 8 C.F.R. § 214.2(o)(iii)(C).¹

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).²

II. ANALYSIS

A. Introduction

The Beneficiary in this matter holds a Ph.D. in Computer Science from the [REDACTED] (2012), and served there as a Postdoctoral Fellow in computer science between 2012 and 2013. He subsequently worked as a technology licensing officer for [REDACTED] in France, before founding the petitioning company. The Petitioner, a Delaware corporation formed in December 2014, is a hardware startup that introduced a new physical media format, a hexagonal wooden disc called a [REDACTED] that enables users to play online streams of data like a record or a CD. The Petitioner seeks classification of the Beneficiary as an alien with extraordinary ability in business and the sciences, specifically in the field of computer science.

B. Evidentiary Criteria

Absent evidence of a major international award, the Petitioner seeks to demonstrate the Beneficiary's sustained acclaim and recognition of achievements through evidence corresponding to the eight regulatory criteria. The Director determined that the Petitioner did not satisfy any of the evidentiary criteria. On appeal, the Petitioner maintains that it has met the criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B)(3) (published material), 8 C.F.R. § 214.2(o)(3)(iii)(B)(4) (judging), 8 C.F.R. § 214.2(o)(3)(iii)(B)(5) (significant recognition for achievements from experts in the field), 8 C.F.R. § 214.2(o)(3)(iii)(B)(6) (authorship of scholarly articles), and 8 C.F.R. § 214.2(o)(3)(iii)(B)(7) (employment in a critical or essential capacity). As discussed below, we conclude that the record satisfies only two of the claimed criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B).³

¹ While not at issue here, there are other evidentiary requirements for O foreign nationals, including documentation relating to the terms of the proposed employment and the nature of the activities and events in which the beneficiary will participate. 8 C.F.R. § 214.2(o)(2)(ii).

² *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.”

³ The Petitioner does not contest the finding of the Director that it has not claimed to satisfy the criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B)(1), (2), or (8). Accordingly, we will not address these criteria in the decision.

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).

For purposes of this criterion, the Petitioner has submitted printouts of the following published online articles pertaining to the Beneficiary and relating to his work in the field:

- [REDACTED] *Wired*,
2014
- [REDACTED] *Quartz*,
2014
- [REDACTED] *CNET*, [REDACTED], 2014
- [REDACTED] *BGR*,
2014
- [REDACTED] "TC", [REDACTED], 2014
- [REDACTED]
www.designboom.com, 2014
- [REDACTED] *Co.Design*,
2014
- [REDACTED] *Wamda*, 2014
- [REDACTED] *BostInno*,
2015
- [REDACTED]
www.musicentrepreneurhq.com, 2017

The majority of the articles were published near the time of the Petitioner's launch, when it was pursuing funding campaigns on [REDACTED] and [REDACTED]. They describe the Beneficiary's reasons for founding the company, and how its novel hardware system operates.

The Director determined that the above-referenced published materials do not meet this criterion, because they do not address how the Beneficiary "is someone who has risen to the very top of his field of endeavor." On appeal, the Petitioner asserts that the level of the Beneficiary's expertise as discussed in the articles should not be the determining factor of whether the published materials meet this criterion. We agree. If the Petitioner submits published material in professional or major trade publications or other major media about the Beneficiary relating to his work in the field, we will conclude that the evidence satisfies the requirements of this criterion.⁴ In this case, however, the Petitioner did

⁴ The level of the Beneficiary's expertise would be more relevant to an examination of the totality of the evidence. As discussed above, 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 that the beneficiary has achieved a level

not present information regarding the general online readership of the websites on which these articles appeared, or other evidence showing that they constitute professional or major trade publications or major media, per the requirements of this criterion. In light of the above, the Petitioner has not submitted evidence that 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 the field. On appeal, the Petitioner asserts that the Director went beyond the plain language of the regulation in considering the significance of the Beneficiary's judging duties.⁵ We agree and we withdraw the Director's determination.

In support of this criterion, the evidence submitted includes an e-mail dated 2013 from [REDACTED] area editor of the journal *Computer Networks*, thanking the Beneficiary for reviewing a manuscript for the journal in 2013. The record also contains e-mails dated between 2009 and 2013, thanking the Beneficiary for completing the review of manuscripts for presentation at professional conferences, symposia, and workshops in the field, including those of the Institute of Electrical and Electronics Engineers. The evidence submitted satisfied 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).

In support of its assertion that the Beneficiary has made significant original contributions to the field, the Petitioner submitted several testimonial letters from his colleagues, mentors, and investors. [REDACTED] co-founder of [REDACTED] a technology transfer company in France, indicates the Beneficiary served a postdoctoral fellowship with the company as a technology licensing officer. He praises the Beneficiary's "extraordinary vision and technical acumen" in having "created his own startup with a product that attracted institutional investors, global press and thousands of customers."

[REDACTED] states he is one of the Beneficiary's advisors and describes him as "among the top performing and most effective entrepreneurs." He cites as examples that the Beneficiary "managed to raise more than \$750,000 from institutional and strategic investors in the [United States], his company has shipped thousands of units all over the world, and has been featured in the most regarded magazines in the tech sector." Although he also asserts that, "[the Beneficiary's] product is used today by thousands of educators, artists and digital content creators," we note that the record does not contain corroborating documentary evidence of his assertion.

of expertise indicating that he is one of that small percentage who have risen to the very top of the field of endeavor and that the beneficiary has sustained national or international acclaim and that his achievements have been recognized in the field of expertise through extensive documentation. 8 C.F.R. § 214.2(o)(3)(ii), (iii).

⁵ The selectivity and prestige associated with the Beneficiary's judging duties would be more relevant to an examination of the totality of the evidence, as discussed above.

██████████ managing director of ██████████ indicates his company is one of the Petitioner's investors. He describes the Beneficiary as "one of a small percentage who have risen to the very top of his field." He states that the Beneficiary has done "innovative" work in "designing, developing, and commercializing [the petitioning company]."

██████████ president of the ██████████ was the Beneficiary's advisor for his doctoral and postdoctoral studies. He indicates that the Beneficiary is "one of a small percentage of entrepreneurial computer scientists developing innovative products for the music and entertainment industry." He claims that the Beneficiary "has made a significant impact on the field and in the industry" because "[h]is numerous publications during his Ph.D and Postdoctoral fellowship were published in important conferences, journals and books" in the field.

██████████ of ██████████ states that he has been the Beneficiary's advisor on product development and business strategy since 2016. He asserts that the Beneficiary "is an extraordinary innovator and entrepreneur whose vision has resulted in the creation of a novel music-based product and funding by major venture capital firms including ██████████ and ██████████ with more than \$750,000 raised," and calls his work "innovative and unique."

██████████ taught the Beneficiary in graduate school and reviewed his doctoral thesis. He describes him as "one of the top performing entrepreneurial computer scientists in the field of Internet Technologies" who "has made an important impact on the field and in the industry in his short career." He notes that the petitioning company "has raised \$1,000,000 in venture capital funding from major actors and investors" and claims it "is poised to disrupt the way content is distributed by creating a new business model for content creators that combines the internet of things, online streaming services and advanced analytics tools."

██████████ a professor at ██████████ and one of the Beneficiary's business advisors describes him as an entrepreneur of "national renown" and the Petitioner as "a significant and innovative company in the music and entertainment industry that has an immense potential for growth."

The Petitioner also provided letters from ██████████ and ██████████ co-founders of ██████████ a Boston-based company that helps "high-growth Hardware" startups design and manufacture their product. They indicate ██████████ is an investor in the petitioning company. ██████████ states that the Beneficiary "is building a company that is revolutionizing the field of Ubiquitous Computing using a new approach to data/content interactions." He notes that the Beneficiary has raised more than \$800,000 in funding for the Petitioner. ██████████ letter, dated March 2018, notes that the Beneficiary has continued to build the petitioning company, "shipping tens of thousands of units worldwide, generating awareness about his product and raising more venture capital." He asserts that the Beneficiary has filed a patent application "for an innovative new ██████████ technology that improves digital promotions and experiential marketing."

██████████ of ██████████ says that he has been a formal consultant and advisor for the petitioning company, which he claims "is changing the way of interacting and monetizing content for brands, record labels and consumers." He emphasizes that "in a short period of time [the Beneficiary] . . . created multiple successful products and managed to raise close to \$1,000,000 in

funding.” He indicates that the petitioning company has “ongoing dialogue” with such companies as [REDACTED] and [REDACTED]. Although he also states that [REDACTED] are using [REDACTED] as their digital brochure for their various conferences and events,” we note that the record does not contain corroborating documentary evidence of this assertion. He claims that the Beneficiary’s work “is set to impact and change the media and entertainment industry.”

On appeal, the Petitioner again refers to the above letters as evidence of the Beneficiary’s contributions to the field. In order to satisfy this criterion, the petitioner must establish not only that the 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. Here, while the letters of [REDACTED] and [REDACTED] assert that the Beneficiary’s product is being used “by thousands of educators, artists and digital content creators,” and by [REDACTED] “as their digital brochure for their various conferences and events,” these assertions, even if they had been sufficiently corroborated, do not establish the product’s significance to the greater fields of business and computer science.

Additionally, demonstrating ability as a skilled entrepreneur and computer scientist 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 v. Beers*, 4 F. Supp. 3d 126, 134-135 (D.D.C. 2013) (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.* Upon review, the preceding letters of recommendation demonstrate that the Beneficiary’s work has earned the respect and admiration of those with whom he has worked and collaborated, but these letters do not establish that he has made original business or scientific contributions of major significance in his field.

The Petitioner also submitted an affidavit from a patent attorney, indicating that the Beneficiary is the lead inventor on a utility patent application titled “Digital Media Content and Marketing.” However, the documents submitted pertaining to that patent application do not contain the Beneficiary’s name. Further, the application shows that patent application was filed after the date the petition was filed on January 25, 2018. The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1). In addition, [REDACTED] March 2018 letter refers to a patent application the Beneficiary filed “for an innovative new [REDACTED] technology.” It is unclear if this is the same patent application referenced in the above affidavit, and [REDACTED] assertion is not supported by corroborating documentary evidence. Regardless, there is no guarantee that the Beneficiary’s patent applications will result in the patents actually being awarded. Moreover, a patent primarily recognizes the originality of the idea, but it does not by itself demonstrate a contribution of major significance in the field.

The Petitioner maintains that the fact that the Beneficiary's work has been presented at international conferences and published in the professional journals and conference proceedings contributes to his eligibility under this criterion. Many professional fields regularly hold conferences and symposia to present new work, to discuss new findings, and to network with other professionals. Participation in these events, however, does not necessarily reflect an original contribution of major significance in the field. It also asserted that the amount that the Beneficiary has raised in investment funding is proof that he has made a significant contribution to the field. The record indicates that the Beneficiary has raised approximately \$1,000,000 in investment funding from corporate investors and campaigns on [REDACTED] and [REDACTED]. However, the Petitioner has not explained how raising approximately \$1,000,000 in investment funding demonstrates a significant contribution to the field. Finally, the above-referenced articles, while describing the Beneficiary and his work in a positive light, do not explain the impact his work has had 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. The fact that the Beneficiary created an original product does not automatically establish that he has made a contribution of major significance in the field. Rather, the significance of the innovation must be established on a case-by-case basis, which the Petitioner has not done here. Based on the foregoing, the Petitioner has not established eligibility under the criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(5).

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 determined that the published materials do not meet this criterion. On appeal, the Petitioner argues that the Director imposed "additional conditions not found in the regulations," in concluding that it did not demonstrate "the impact these articles have had on their field as a whole." We agree.⁶ Upon review, we withdraw the Director's determination. The record demonstrates that the Beneficiary has published at least 2 articles in professional scientific journals, and has presented 10 papers at international conferences, symposia, and workshops in the field. Upon review, the evidence satisfies 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 it has employed the Beneficiary in a critical or essential capacity. The Director determined that although the record shows that the Beneficiary has been employed in a critical or essential capacity for the petitioning company as its CEO and co-founder, the Petitioner did not establish that it is or was a company with a distinguished reputation, as required by this criterion. The record supports the Director's determination.

⁶ The level of recognition received by the Beneficiary's articles would be more relevant to an examination of the totality of the evidence, as discussed above.

In response to the Director's request for evidence, the Petitioner provided the above-referenced letters of [REDACTED] and [REDACTED] in support of this criterion. These authors speculate as to the future contributions the Beneficiary may make to the realm of digital content distribution through the launch of the petitioning company. For instance, [REDACTED] asserts that the Petitioner "is poised to disrupt the way content is distributed by creating a new business model for content creators." [REDACTED] states that the Beneficiary's work "is set to impact and change the media and entertainment industry." [REDACTED] claims that the Petitioner is "a significant and innovative company in the music and entertainment industry that has an immense potential for growth." While these statements acknowledge the current stage of development of the petitioning company, they do not establish that it has a distinguished reputation in the field. Further, the fact that the Petitioner has attracted funding from investors as a startup company, and that its launch was positively reviewed by various sources, does not demonstrate that the company has achieved a distinguished reputation. Based on the foregoing, the Petitioner has not established the Beneficiary's eligibility under this criterion.

III. CONCLUSION

The Petitioner has not submitted evidence that the Beneficiary has received a major, internationally recognized award pursuant to 8 C.F.R. § 214.2(o)(3)(iii)(A), and the exhibits do not satisfy at least three of the evidentiary criteria specified in the regulation at 8 C.F.R. § 214.2(o)(3)(iii)(B). Consequently, we need not reach the issue of 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).

Nevertheless, we note that we have reviewed the record in the aggregate, concluding that it does not support a finding that the Beneficiary has established the acclaim and recognition required for the classification sought. The record includes press coverage pertaining to the Beneficiary demonstrating a positive response to his novel product at the time of its launch. However, the Petitioner has not established that this level of coverage is indicative of national or international acclaim. In addition, the coverage does not show the significance of his product in the field after its launch, and the record does not show that the level of success the Beneficiary has had from 2014 onward has brought him *sustained* national or international acclaim in the field. Regarding the Beneficiary's original contributions, as discussed previously in detail, the testimonial letters do not detail his specific contributions and explain how they have influenced the field.

In addition, the Petitioner has established that the Beneficiary has participated in the peer-review process for numerous conferences and symposia. However, the letters that confirm his judging experience do not provide specific, factual information as to the actual selection criteria utilized to select the Beneficiary as a reviewer, nor does the record otherwise establish that his judging experience is consistent with national or international acclaim. Further, regarding the Beneficiary's publication record of at least 12 published articles and papers at the time of filing, the Petitioner has not established that 178 total citations to the Beneficiary's published work is consistent with a finding that he is among the small percentage at the very top of his field. Moreover, it has not provided the citing articles to show whether the publications substantively discuss the Beneficiary's work rather than merely citing it as one among many other references as background information. Without evidence that the researchers

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substantially relied upon the Beneficiary's work or highlighted its significance, a review of the citations themselves does not support the Petitioner's assertion that his work has gained widespread prominence among top researchers in the field.

For the reasons discussed above, the Petitioner has not established that the Beneficiary is eligible for the O-1 visa classification, as a foreign national with extraordinary ability in business and the sciences. 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 Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012). Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of Q-, Inc.*, ID# 2090739 (AAO Mar. 27, 2019)