



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

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

In Re: 6506742

Date: APR. 29, 2020

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Extraordinary Ability)

The Petitioner, a human and environmental rights educator, seeks classification as an alien of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Texas Service Center denied the petition, concluding that the Petitioner had satisfied only two of the initial evidentiary criteria, of which she must meet at least three.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 203(b)(1) of the Act makes visas available to immigrants with extraordinary ability if:

- (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the recognition of his or her achievements in the field through a one-time achievement

(that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then he or she must provide sufficient qualifying documentation that meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011). This two-step analysis is consistent with our holding that the “truth is to be determined not by the quantity of evidence alone but by its quality,” as well as the principle 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.” *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

## II. ANALYSIS

The Petitioner indicates employment as a professor at  in Brazil since 2004.

### A. Evidentiary Criteria

Because the Petitioner has not indicated or established that she has received a major, internationally recognized award, she must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Director found that the Petitioner met only two of the evidentiary criteria relating to judging at 8 C.F.R. § 204.5(h)(3)(iv) and leading or critical role at 8 C.F.R. § 204.5(h)(3)(viii), discussed further below. On appeal, the Petitioner demonstrates that she authored scholarly articles in professional publications, thereby fulfilling 8 C.F.R. § 204.5(h)(3)(vi).

Because the Petitioner has shown that she satisfies three criteria, we will evaluate the totality of the evidence in the context of the final merits determination below.<sup>1</sup>

### B. Final Merits Determination

As the Petitioner submitted the requisite initial evidence, we will evaluate whether she has demonstrated, by a preponderance of the evidence, her sustained national or international acclaim,<sup>2</sup>

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<sup>1</sup> *See* USCIS Policy Memorandum PM 602-0005.1, *Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator’s Field Manual (AFM) Chapter 22.2, AFM Update AD11-14* 13 (Dec. 22, 2010), <https://www.uscis.gov/policymanual/HTML/PolicyManual.html> (providing that objectively meeting the regulatory criteria in part one alone does not establish that an individual meets the requirements for classification as an individual of extraordinary ability under section 203(b)(1)(A) of the Act).

<sup>2</sup> *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 14 (stating that such acclaim must be maintained and

that she is one of the small percentage at the very top of the field of endeavor, and that her achievements have been recognized in the field through extensive documentation. In a final merits determination, we analyze a petitioner's accomplishments and weigh the totality of the evidence to determine if her successes are sufficient to demonstrate that she has extraordinary ability in the field of endeavor. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20.<sup>3</sup> In this matter, we determine that the Petitioner has not shown her eligibility.

The record reflects that the Petitioner graduated in pedagogy from [redacted] in 2000 and received a master's degree in education of health and environment sciences from [redacted] Universitario in 2005 and a doctorate in education from Universidad [redacted] in 2015. Moreover, as indicated above, the Petitioner has been employed as a professor at [redacted] since 2004. In addition, she performed in various municipality positions within the [redacted] such as secretary of social services, undersecretary of social services, and coordinator of projects and programs from 2005 – 2010. Further, she served as the coordinator of [redacted] from 2004 – 2005. As mentioned above, the Petitioner judged others, authored scholarly articles, and performed in leading or critical roles. The record, however, does not demonstrate that her personal and professional achievements reflect a “career of acclaimed work in the field” as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990).

Relating to the Petitioner's service as a judge of the work of others, an evaluation of the significance of her experience is appropriate to determine if such evidence indicates the required extraordinary ability for this highly restrictive classification. *See Kazarian*, 596 F. 3d at 1121-22.<sup>4</sup> The record reflects that the Petitioner participated as part of an examination board at [redacted] judging approximately eight final term papers of students from 2015 – 2016. Moreover, she assisted the examination board in evaluating teachers for an engineering course in 2015. Here, the Petitioner's judging experience mainly involves evaluating the work of students and aspiring professionals. *Cf.*, *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Commr. 1994) (USCIS has long held that even athletes performing at the major league level do not automatically meet the “extraordinary ability” standard). Further, she did not establish that these instances place her among the small percentage at the very top of her field. *See* 8 C.F.R. § 204.5(h)(2). The commentary for the proposed regulations implementing section 203(b)(1)(A)(i) of the Act provide that the “intent of Congress that a very high standard be set for aliens of extraordinary ability is reflected in this regulation by requiring the petitioner to present more extensive documentation than that required” for lesser classifications. 56 Fed. Reg. 30703, 30704 (July 5, 1991). She did not show, for example, how her experience in judging students and selecting a teacher for a course compare to others at the very top of the field.

In addition, the Petitioner did not demonstrate that her two instances of judging within a two-year period contribute to a finding that she has a career of acclaimed work in the field or indicative of the

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providing *Black's Law Dictionary's* definition of “sustain” as to support or maintain, especially over a long period of time, and to persist in making an effort over a long period of time).

<sup>3</sup> *Id.* at 4 (instructing that USCIS officers should then evaluate the evidence together when considering the petition in its entirety to determine if the petitioner has established by a preponderance of the evidence the required high level of expertise of the immigrant classification).

<sup>4</sup> *See also* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 13 (stating that an individual's participation should be evaluated to determine whether it was indicative of being one of that small percentage who have risen to the very top of the field of endeavor and enjoying sustained national or international acclaim).

required sustained national or international acclaim. See H.R. Rep. No. at 59 and section 203(b)(1)(A) of the Act. The Petitioner did not establish, for instance, that she garnered wide attention from the field based on her work judging students' term papers and selecting a teacher beyond [redacted]. Moreover, serving on an examination board does not automatically demonstrate that an individual has extraordinary ability and sustained national or international acclaim at the very top of her field. Without evidence that sets her apart from others in her field, such as evidence that she has a consistent history of reviewing or judging recognized, acclaimed experts in her field, the Petitioner has not shown that her judging experience places her among that small percentage who has risen to the very top of the field of endeavor. See 8 C.F.R. § 204.5(h)(2) and 56 Fed. Reg. at 30704.

Likewise, authorship and publication do not automatically place one at the top of the field.<sup>5</sup> The record reflects that the Petitioner authored 15 articles that were published in *Revista Dominus* from 2015 – 2016. In addition, she authored two books in 2016, as well as one in 2004. However, the Petitioner did not demonstrate that her publication record of 15 papers and two books in the two years preceding the filing of her petition is consistent with having a career of acclaimed work and sustaining national or international acclaim. She did not submit evidence showing the significance of her authorships or how her overall publications compare to others who are viewed to be at the very top of the field. See H.R. Rep. No. at 59 and section 203(b)(1)(A) of the Act. Here, the Petitioner did not establish that her authorships reflect being among the small percentage at the very top of her field. See 8 C.F.R. § 204.5(h)(2) and 56 Fed. Reg. at 30704.

Moreover, the citation history or other evidence of the influence of her written work can be an indicator to determine the impact and recognition that her publications have had on the field and whether such influence has been sustained. For example, numerous independent citations for an article authored by the Petitioner may provide solid evidence that her work has been recognized and that other human and environmental rights educators have been influenced by her work. Such an analysis at the final merits determination stage is appropriate pursuant to *Kazarian*, 596 F. 3d at 1122. Here, the Petitioner provided two articles that cited to her written work. While the citation of her work shows that at least a few others in her field have noticed it, the Petitioner has not established that such citations are sufficient to demonstrate a level of interest in the field commensurate with sustained national or international acclaim. See section 203(b)(1)(A) of the Act. In addition, the Petitioner has not shown that the limited citations to her work represent attention at a level consistent with being among that small percentage at the very top of her field. See 8 C.F.R. § 204.5(h)(2) and 56 Fed. Reg. at 30704.

As it relates to her roles, as mentioned above, the Petitioner is employed as a professor at [redacted] and previously held municipality positions with the [redacted] and served as the coordinator of [redacted], as well as an instructor at [redacted] pedagogy coordinator for a course at [redacted] and post-graduate coordinator at the [redacted]. Although she documented her professional career, she did not demonstrate that she garnered national or international acclaim in the field beyond her employers. See section 203(b)(1)(A) of the Act and 56 Fed. Reg. at 30704. For example, [redacted] adjunct municipal secretary of higher education for [redacted] stated that the Petitioner “carried out her monumental work for [redacted], significantly developing our

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<sup>5</sup> See also USCIS Policy Memorandum PM 602-0005.1, *supra*, at 13 (providing that publications should be evaluated to determine whether they were indicative of being one of that small percentage who has risen to the very top of the field of endeavor and enjoying sustained national or international acclaim).

local economy, expanding academic resources, and providing countless employment opportunities to [redacted] citizens.” Here, [redacted] commented on the Petitioner’s limited, local impact to [redacted] but did not discuss how she has been recognized on a national or international scale.

Likewise, [redacted] academic head at [redacted] indicated that the Petitioner “created numerous new courses and programs that continue to distinguish [redacted] among other universities,” “led her students to produce the most comprehensive, scientifically sound, and progressive research in our post-graduate program,” and “established teaching guidelines and standardization methods that boosted student enrollment and class attendance rates.” While [redacted] described the Petitioner’s various accomplishments to [redacted], he did not explain whether these achievements garnered a level of attention consistent with being among that small percentage at the very top of the field. *See* 8 C.F.R. § 204.5(h)(2).

Here, the Petitioner did not demonstrate that her professional career spanning over 15 years, including her work at [redacted] [redacted] [redacted] or [redacted] represents a career of acclaimed work and sustained national or international acclaim. *See* H.R. Rep. No. at 59 and section 203(b)(1)(A) of the Act. Although the Petitioner’s reference letters indicated her professional accomplishments, they did not show how her roles resulted in widespread acclaim from her field, that she drew significant attention from the greater field, or that overall field considers her to be at the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2) and 56 Fed. Reg. at 30704.

Beyond the three criteria that the Petitioner satisfied, we consider additional documentation in the record in order to determine whether the totality of the evidence demonstrates eligibility. Here, for the reasons discussed below, we find that the evidence does not establish that the Petitioner has sustained national or international acclaim and is among the small percentage of the top of her field.

The Petitioner presented evidence reflecting that she received a “Motion of Applause” from [redacted] for “dedicat[ing] herself attentively to her work as a servant, as well as working hard to solve problems and seek saloons [sic].” However, the Petitioner did not show that the award reflects the field’s national or international recognition for excellence. While [redacted] acknowledged the Petitioner’s accomplishments at the local level, she did not demonstrate that she garnered national or international acclaim based on her receipt of the municipal award. *See* section 203(b)(1)(A) of the Act. Further, the Petitioner did not establish that such receipt of a regional award represents an individual who is among the small percentage who has risen to the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2) and 56 Fed. Reg. at 30704.

Moreover, as indicated above, the Petitioner is a member of the examination board of [redacted]. Although the Petitioner participated in choosing a professor for a course, she did not demonstrate that her participation with this board was somehow remarkable or garnered sustained national or international acclaim. *See* section 203(b)(1)(A) of the Act. For instance, she did not submit evidence of widespread media coverage of her membership resulting in significant attention. *See* 56 Fed. Reg. at 30704. In addition, she did not establish that her membership with this single association reflects that small percentage who has risen to the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(3).

Regarding media coverage, the Petitioner offered four articles from click [redacted] com and odebateon.com; however, none of the articles reflect published material about her. Instead, the articles

cite the Petitioner as a representative of [redacted] in which she provides a quote in response to a municipality issue. Similarly, the Petitioner submitted approximately 40 articles from [redacted].rj.gov, akin to press releases, where the articles quote the Petitioner regarding an announcement or program by [redacted]. Here, the Petitioner did not demonstrate that she received press coverage consistent with the sustained national or international acclaim necessary for this highly restrictive classification. *See* section 203(b)(1)(A) of the Act. Further, the Petitioner did not show that website articles that mention her name, but are not about her, represent a level of success consistent with being among that small percentage who has risen to the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2). In addition, the Petitioner did not establish that the regional media coverage from three websites reflects a career of acclaimed work in the field or a very high standard of presenting more extensive documentation than that required for lesser classifications. *See* H.R. Rep. No. at 59 and 56 Fed. Reg. at 30704.

Further, the Petitioner provided recommendation letters that summarized her written work and contributions. For instance, [redacted] claimed that “[i]n [redacted] [the Petitioner] reports findings of her original research, which had a major significant impact on her field.”<sup>6</sup> Moreover, the letter asserts that the Petitioner [redacted]. [t]his conclusion in itself was extraordinary, as countless lives as well as investments could be saved by avoiding breakage of this commonly-used piece of equipment.” Here, the letter recounts the Petitioner’s research and findings and indicate their publications in a journal without demonstrating that her contributions have been of major significance in the field. Instead, the letter speculates on the potential influence and on the possibility of being majorly significant at some point in the future.

In addition, the letters do not contain sufficient information and explanation, nor does the record include corroborating evidence, to show that the Petitioner is viewed by the overall field, rather than by a solicited few, as being among that small percentage at the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2). Further, the Petitioner did not establish that she has made impactful or influential contributions in the greater field reflecting a career of acclaimed work in the field, garnering the required sustained national or international acclaim. *See* H.R. Rep. No. at 59 and section 203(b)(1)(A) of the Act. Here, the letters describe her work without showing how they rise to a level of major significance in the field and represent an individual who has garnered sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation. *See* section 203(b)(1)(A) of the Act and 56 Fed. Reg. at 30704.

Moreover, the Petitioner submitted evidence reflecting that she presented article at the 1st Academic Congress on Environment and Development of [redacted] in 2004 and eight articles at the I Academic Forum of [redacted] in 2016. The Petitioner, however, did not establish that her presentations at two conferences, occurring approximately 12 years apart, is consistent with having a career of acclaimed work and sustaining national or international acclaim. *See* H.R. Rep. No. at 59 and section 203(b)(1)(A) of the Act. In addition, the Petitioner did not demonstrate that her presentations reflect being among the small percentage at the very top of her field. *See* 8 C.F.R. § 204.5(h)(2) and 56 Fed.

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<sup>6</sup> Although we discuss one letter, the record reflects that the Petitioner submitted two other letters, and we have reviewed and considered each one.

Reg. at 30704. Further, the Petitioner, for instance, did not show the significance of her presentations, how her overall presentations compare to others who are viewed to be at the very top of the field, or whether she received notoriety or wide attention based on her presentations.

The record as a whole, including the evidence discussed above, does not establish the Petitioner's eligibility for the benefit sought. Here, the Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than those progressing toward the top. Even major league level athletes do not automatically meet the statutory standards for classification as an individual of "extraordinary ability." *Price*, 20 I&N Dec. at 954. While the Petitioner need not establish that there is no one more accomplished to qualify for the classification sought, we find the record insufficient to demonstrate that she has sustained national or international acclaim and is among the small percentage at the top of her field. *See* section 203(b)(1)(A)(i) of the Act and 8 C.F.R. § 204.5(h)(2).

### III. CONCLUSION

For the reasons discussed above, the Petitioner has not demonstrated her eligibility 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.

**ORDER:** The appeal is dismissed.