



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

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

In Re: 7303422

Date: FEB. 11, 2020

Appeal of Texas Service Center Decision

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

The Petitioner, a seed capital and entrepreneurial business, 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 Beneficiary had satisfied only two of the initial evidentiary criteria, of which she must meet at least three. In addition, the Director found that the Petitioner did not establish the Beneficiary's intent to continue to work in her area of expertise.

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 has employed the Beneficiary as an associate director of the [REDACTED] [REDACTED] since October 2016.

A. Evidentiary Criteria

Because the Petitioner has not indicated or established that the Beneficiary 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 Beneficiary met two of the evidentiary criteria relating to judging at 8 C.F.R. § 204.5(h)(3)(iv) and scholarly articles at 8 C.F.R. § 204.5(h)(3)(vi). The record reflects that the Beneficiary reviewed papers relating to a research topic for a journal and authored scholarly articles in professional publications. As such, we concur with the Director’s decision regarding the judging and scholarly articles criteria.

In addition, we find that the Beneficiary’s position with the Petitioner, which has a distinguished reputation, fulfills the leading or critical role criterion at 8 C.F.R. § 204.5(h)(3)(viii). Because the Petitioner has shown that the Beneficiary satisfies three criteria, we will evaluate the totality of the evidence in the context of the final merits determination below.¹

¹ *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).

B. Final Merits Determination

As the Petitioner submitted the requisite initial evidence, we will evaluate whether it has demonstrated, by a preponderance of the evidence, the Beneficiary's sustained national or international acclaim,² 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 beneficiary'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 1119-20.³ In this matter, we determine that the Petitioner has not shown the Beneficiary's eligibility.

The Petitioner argues that the Beneficiary's "work in the field of [redacted] research was not as a researcher." Specifically, the Petitioner contends that "the Beneficiary's extraordinary ability was in her success in identifying, analyzing and advising other researchers on developing [redacted] technologies and bringing them to market." The record reflects that the Beneficiary received her bachelor of science in zoology from [redacted] in India (2002), her master of science in molecular genetics from the University of [redacted] in the United Kingdom (2004), and her doctor of philosophy in genetics from [redacted] (2010). According to the Beneficiary's curriculum vitae, she held various student positions at [redacted], [redacted] and [redacted] such as research intern, research assistant, graduate fellow, and graduate assistant from 2001 to 2010. Further, at the [redacted] Institute for [redacted] Development, she served as a development coordinator, postdoctoral scientist, and scientist from 2010 to 2016.⁴ Currently, the Beneficiary works for the Petitioner as an associate director for the [redacted]

As indicated above, the Beneficiary began her academic and professional career as a scientist and researcher and then transitioned to managing research in a management role. While the Petitioner demonstrated the transitional relationship between conducting research and then managing research, the Beneficiary satisfied three criteria based on a combination of these fields. Accordingly, we will evaluate the totality of the evidence to determine whether the Beneficiary received recent national or international acclaim in the field of scientific research and sustained that acclaim in research management.⁵ As mentioned above, the Beneficiary judged others within her field, authored scholarly

² See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 14 (stating that such acclaim must be maintained and 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).

³ *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).

⁴ The Beneficiary also volunteered in development and marketing at the [redacted] Institute from 2016 to 2018.

⁵ The AFM provides:

In general, if a beneficiary has clearly achieved *recent* national or international acclaim as an athlete and has sustained that acclaim in the field of coaching/managing at a national level, adjudicators can consider the totality of the evidence as establishing an overall pattern of sustained acclaim and extraordinary ability such that we can conclude that coaching is within the beneficiary's area of expertise.

articles, and performed in a leading role. The record, however, does not demonstrate that her achievements are reflective of 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 Beneficiary’s service as a judge of the work of others as a researcher, 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 1121-22.⁶ The Petitioner provided a letter from [redacted] [redacted] for *Frontiers*, who stated that the Beneficiary “had served as a Guest Associate Editor for [redacted] [redacted] . . . for the scientific journal *Frontiers in Genetics* from February 2017 until April 2018.”⁷ However, the Petitioner did not establish that the Beneficiary’s editing for a [redacted] places her among the small percentage at the very top of her field. *See* 8 C.F.R. § 204.5(h)(2). The Petitioner did not show, for example, how the Beneficiary’s limited editing experience compares to others at the very top of the field. In addition, the Petitioner did not demonstrate that she received significant attention from the field based on her editing of the research topic.

As it pertains to the Beneficiary’s experience as a judge of the work of others as an associate director, the record reflects that the Petitioner submitted several recommendation letters that indicated that judging the work of others is inherent to the Beneficiary’s occupation as an associate director. For instance, [redacted] claimed that the Beneficiary “serves as an individual judge of her peers in the [redacted] field every day” and “[b]eing a judge is an integral part of her job as she evaluates and identifies the most promising [redacted].” Moreover, [redacted] [redacted] asserted that the Beneficiary “is obviously a good judge of her peers in the field as the Commission has approved over \$145million [*sic*] dollars in funding [redacted] projects, which have all had successful outcomes.” Further, [redacted] opined that the Beneficiary “judges the work of other scientists on a daily basis as that is the crux of her position, at stake is not a publication, but funding vital to a project.” In addition, [redacted] stated that the Beneficiary “judges the research to determine whether it has [redacted] viability and advises whether the State of [redacted] should fund them.” Also, [redacted] indicated that the Beneficiary “provides unique expertise and judgment that helps move technologies forward.” Although the letters reflect that judging work is a characteristic, as well as a requirement, of her position, the letters do not contain specific, detailed information regarding the significance of her judging experience. Instead, the authors make broad statements, such as “have all had successful outcomes,” without showing how the Beneficiary garnered national or international acclaim. *See* section 203(b)(1)(A) of the Act.

Here, the Petitioner did not demonstrate that the Beneficiary’s approximate one year editing experience and over two years job-related reviewing duties contribute to a finding that she has a

AFM ch. 22.22(i)(1)(C) (emphasis in original).

⁶ *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).

⁷ In response to the Director’s request for evidence, the Petitioner also submitted two requests for the Beneficiary to review applications and judge a scientific award. However, 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). Here, the judging requests occurred after the filing of the petition. Moreover, the Petitioner did not demonstrate that the Beneficiary actually participated in the judging process.

“career of acclaimed work in the field” as contemplated by Congress or indicative of the 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 the Beneficiary garnered wide attention from the field based on her work as a guest associate editor or as a reviewer of technologies or projects. Accordingly, the Petitioner did not show that the Beneficiary received acclaim as a researcher and maintained that recognition as an associate director.

Moreover, serving as a guest associate editor or performing the job duty of reviewing projects 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 the Beneficiary apart from others in her field, such as evidence that she has a consistent history of completing a substantial number of review requests relative to others, served in editorial positions for distinguished journals or publications, chaired technical committees for reputable conferences, or reviewed acclaimed projects, the Petitioner has not shown that the Beneficiary’s 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).

Likewise, the publication of her research does not automatically place one at the top of the field.⁸ As a researcher, the Petitioner provided evidence showing that the Beneficiary authored eight articles from 2009 to 2015. However, the Petitioner did not demonstrate that this publication record is consistent with having a “career of acclaimed work.” *See* H.R. Rep. No. at 59. Moreover, 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). The Petitioner, for instance, did not show the significance of her authorship of eight articles in a six year period or how her publications compare to others with similar years of experience who are viewed to be at the very top of the field.

Moreover, the Petitioner did not demonstrate that the Beneficiary authored any materials in journals or other professional publications as a research manager or associate director. The commentary for the proposed regulations implementing section 203(b)(1)(A)(i) of the Act provides 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).⁹ Here, the Beneficiary’s absence of written work in the past four years does not reflect this very high standard, nor does it support a finding that the Beneficiary has sustained national or international acclaim. *See* section 203(b)(1)(A) of the Act. Moreover, the Petitioner did not establish that the Beneficiary garnered acclaim as a researcher and continued that recognition as an associate director.

As authoring scholarly articles is often inherent to the work of scientists and researchers, the citation history or other evidence of the influence of her articles can be an indicator to determine the impact and recognition that her work has had on the field and whether such influence has been sustained. For example, numerous independent citations for an article authored by the Beneficiary may provide solid evidence that her work has been recognized and that other researchers and scientists have been

⁸ *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).

⁹ *See also* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 2.

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 record indicates that the Petitioner provided evidence reflecting that the Beneficiary's articles cumulatively garnered a few dozen citations, including four articles that did not receive any citations.¹⁰

While the Beneficiary's citations, both individually and collectively, show that the field has noticed some of her work, 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. Moreover, the Petitioner has not shown that the citations to the Beneficiary's research represent attention at a level consistent with being among small percentage at the very top of her field. *See* 8 C.F.R. § 204.5(h)(2).¹¹

As it pertains to her position as an associate director, the Petitioner demonstrated that the role itself is leading. However, the Petitioner did not establish that the Beneficiary's role at a single organization represents sustained national or international acclaim or a "career of acclaimed work in the field." *See* section 203(b)(1)(A) of the Act and H.R. Rep. No. at 59. Moreover, while the Petitioner submitted reference letters that discussed the Beneficiary's responsibilities and accomplishments, they did not show that her associate director role 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. Further, her reference letters made broad assertions without providing specific, detailed information establishing that the Beneficiary received sustained national or international acclaim based on her role as an associate director.

For instance, [redacted] executive director for the Petitioner, listed the Beneficiary's job duties, praised her performance, and indicated two international conferences "that specifically invited her to present." However, [redacted] did not show how being invited to two conferences demonstrates the Beneficiary's extensive recognition by the field. In fact, [redacted] CEO for the Petitioner, indicated that "[i]t is true that [the Beneficiary's] name will not be associated with the research or any company that may be formed, this is the nature of her job." Although the Beneficiary performed in the expected role of an associate director as outlined in the recommendation letters, the Petitioner did not show that she garnered sustained national or international acclaim. *See* section 203(b)(1)(A) of the Act.

In addition, although the Petitioner argues for the Beneficiary's role at the [redacted] Institute for [redacted] Development [redacted], the Petitioner provided recommendation letters that discussed the Beneficiary's position as a researcher, which neither indicated a leading or critical role, nor evidenced sustained national or international acclaim. For example, [redacted] director and CEO of [redacted] identified the Beneficiary's involvement in various research and projects but did not elaborate on any attention she received from the field or how her role placed her among the small percentage at the very top of the field. *See* 8 C.F.R. § 204.5(h)(2). Again, the Petitioner did not establish that the Beneficiary

¹⁰ *See* screenshots from scholar.google.com.

¹¹ The Petitioner also submitted evidence of the Beneficiary's poster presentations at two conferences in 2015 and 2016, including three requests to speak at conferences after the filing of her petition. *See* 8 C.F.R. § 103.1(b)(1). However, the Petitioner did not establish that the Beneficiary's presentations or participation resulted in sustained national or international acclaim or demonstrates evidence of being among the small percentage at the very top of the field. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2).

garnered national or international acclaim as a researcher and sustained that recognition as an associate director.

Beyond the three criteria that the Beneficiary 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 neither fulfills the requirements of any further evidentiary criteria, nor contributes to an overall finding that the Beneficiary has sustained national or international acclaim and is among the small percentage of the top of her field.

As indicated above, the Petitioner provided recommended letters that summarized the Beneficiary's work and contributions as a researcher and associate director. The letters, however, do not contain sufficient information and explanation to show that the Beneficiary 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 the Beneficiary 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.

In addition, the Petitioner provided screenshots from four websites reporting on the findings from one of the Beneficiary's articles in 2012. The material, however, speculates on the possible impact the research may have on the field. For example, the coverage indicates "this work could help lead to novel [redacted] therapies . . . , which may stem from problems with development," "[redacted] from corpses might play a key role in developing future [redacted] therapies" and "[redacted] . . . , could be collected from cadavers and reprogrammed into [redacted], which could then develop into [redacted]." While the Beneficiary's research showed promise in 2012, the Petitioner did not establish how her work already qualified as a contribution of major significance in the field, rather than prospective, potential impacts.

Moreover, the reporting did not mention the Beneficiary. Instead, the screenshots refer and quote [redacted] [redacted] neurologist and chief operating officer at [redacted]. Although the Beneficiary contributed to the research and article, the media reports do not single her out or acknowledge her for her findings. Here, the Petitioner did not establish that this media coverage reflects the Beneficiary's status as 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.

The record as a whole, including the evidence discussed above, does not establish the Beneficiary's eligibility for the benefit sought. Here, the Petitioner seeks a highly restrictive visa classification for the Beneficiary, 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." *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994). 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 the Beneficiary 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 the Beneficiary's eligibility as an individual of extraordinary ability.¹² 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.

¹² As the Petitioner has not demonstrated the Beneficiary's extraordinary ability under section 203(b)(1)(A)(i) of the Act, we need not consider whether she intends to continue working in her area of extraordinary ability under section 203(b)(1)(A)(ii). See *INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach).