



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

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

In Re: 4310156

Date: JAN. 6, 2020

Appeal of Nebraska Service Center Decision

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

The Petitioner, a researcher in special education, 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 Nebraska 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).

II. ANALYSIS

The Petitioner has a doctorate in applied biology from the University of [redacted] Centre for Research in Mental Retardation (2003). According to the Petitioner’s CV, at the time the instant petition was filed on September 18, 2017, she was a doctoral candidate in special education, specializing in the area of emotional and behavioral disorders in children at the elementary and middle school level. The Petitioner’s doctoral research at the University of [redacted] involved the development and testing of the behavioral assessment tool [redacted] a [redacted] application (app) for students and teachers in which both parties rate student behavior, and teacher ratings are stored to provide feedback and track progress. 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).

In denying the petition, the Director determined that the Petitioner fulfilled two of the initial evidentiary criteria, 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 Petitioner reviewed papers for journals. In addition, the Petitioner has authored scholarly articles in professional publications. Accordingly, we agree with the Director that the Petitioner fulfilled the judging and scholarly articles criteria.

On appeal, the Petitioner asserts that she meets an additional evidentiary criterion, discussed below. After reviewing all of the evidence in the record, we conclude that the record does not support a finding that the Petitioner satisfies the requirements of at least three criteria.

Evidence of the alien’s original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field. 8 C.F.R. § 204.5(h)(3)(v).

The Petitioner contends that the testimonial letters and citations to her work demonstrate her eligibility for this criterion. In order to satisfy the regulation at 8 C.F.R. § 204.5(h)(3)(v), a petitioner must establish that not only has she made original contributions but that they have been of major significance in the field.¹ For example, a petitioner may show that the contributions have been widely

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 8-9* (Dec. 22, 2010), <https://www.uscis.gov/policymanual/HTML/PolicyManual.html> (finding that although funded and published work may be “original,” this fact alone is not sufficient to establish that the work is of major significance).

implemented throughout the field, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance in the field.

On appeal, the Petitioner references her submission of letters from colleagues and other educators and experts regarding her original contributions in her field. She asserts that the Director discounted the submitted reference letters.² We find no error in the Director's analysis of the support letters. The Director considered their content and concluded that they did not specify how the Petitioner's contributions rise to a level consistent with original contributions of major significance in the field. If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for a petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998). The opinions of experts in the field are not without weight and we have considered them below.

The Petitioner provided several expert letters in support of this criterion. [redacted] Chair of the [redacted] College, indicates that the Petitioner "has developed [redacted] interventions that have proven to be a good option to correct disruptive behaviors and increase time on academic engagement." [redacted] an English professor at [redacted] College in [redacted] Texas, states that the Petitioner's "work to educate school professionals to implement simple [redacted] interventions based on [redacted] has benefitted school students with problem behavior and poor academic performance. [redacted] a neurology professor at the University of [redacted] states that he is aware that the Petitioner and her research group "have been successfully using the [redacted] intervention to correct behavior and academic problems encountered in the K-12 public school students." These letters summarize the Petitioner's research achievements and broadly discuss the potential impact of her research in the field of special education. However, they do not establish that her original contributions are already recognized as majorly significant within this field.

The Petitioner also provided letters from several colleagues and other educators. [redacted] professor emerita of special education at the University of [redacted] asserts that the Petitioner's "future inquiry will contribute substantially to the field of education," and describes the Petitioner as "an important contributor to the development of [redacted] applications aimed at improving student behavior and academic outcomes." [redacted] an assistant professor of special education at the University of [redacted] states that the Petitioner's notable accomplishments include having "worked on a number of projects to refine the use of [redacted] to improve services for students with disabilities." [redacted], who was a postdoctoral fellow with the Petitioner at [redacted] University, states that she is aware of the Petitioner's "vital" studies of the use of the [redacted] intervention app with two middle school students, and that "[b]oth students showed marked improvement in their classroom behavior" [redacted] a special education teacher in the [redacted] School District, indicates that the Petitioner "played a key role in our collaborative evidence-based research project in which we applied [redacted] interventions." She indicates that the four target students improved their behavior

² The Petitioner also broadly maintains that the Director's decision was contrary to the holding in the precedent decision of *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm'r 1988). *Matter of Sea* held, in part, that an evaluation by a credentials evaluation organization of a person's foreign education that is not in accord with previous equivalencies, or is in any way questionable, may be discounted or given less weight. However, other than citing that precedent decision, the Petitioner has not explained how that case supports the instant appeal, i.e., how the facts of that precedent decision are analogous or similar to the instant case.

“from an average baseline of 32% to an average maintenance of 86%.” While these authors indicated that the Petitioner’s research with the [redacted] app benefitted several middle school students in the [redacted] public school system, the letters do not establish the impact to the overall field beyond the Petitioner’s research subjects.

Within the Petitioner’s response to the Director’s request for evidence (RFE), she provided additional letters from colleagues and other educators and experts regarding her original contributions in her field. [redacted] a second grade teacher in [redacted] states that she and her student were part of the pilot program for the [redacted] app, and that she continues to use it to enable students in her classroom to [redacted] behavior. She calls it “a marked improvement for my students who are using the app.” [redacted], Superintendent of [redacted] School District in [redacted] Iowa, states that the Petitioner is “uniquely positioned as a researcher to contribute to the field of Special Education,” through her research on [redacted] and regulation. [redacted] curriculum director of [redacted] in [redacted] Iowa, and a former elementary school teacher, states that the Petitioner’s research “uses [redacted] interventions across grade levels, subjects and disabilities to achieve the desired behaviors in students.”

The Petitioner’s additional expert letters included a letter from [redacted] a social psychologist and Senior Director of [redacted] Research Center. He relates his knowledge that the Petitioner conducted a middle-school study using [redacted] interventions to reduce students’ behavior problems and enhance their academic performance, and authored six publications concerning that research. He asserts that the Petitioner “has made and will continue to make original and impactful contributions of major significance to both research and practice. . . .” [redacted] an assistant research professor in special education at the University of [redacted], states that the Petitioner “has demonstrated the ability to make significant and innovative contributions to the field of special education, in her work applying [redacted] interventions to school-wide behavior practices and assessments.” [redacted] a doctoral candidate in special education at [redacted] University in [redacted] states that the Petitioner coupled the [redacted] app with the [redacted] intervention “in order to remediate students struggling with not only reading, but also with behavioral problems.” She states “[t]his intervention has direct use in the field as it can be implemented on students across subject areas and grade levels and on students with different and varying levels of abilities.”

Overall, the letters, as well as other evidence in the record, show that the Petitioner’s original work has added value to the pool of knowledge, and opened avenues for further research into behavioral assessment tools involving [redacted] behavior. The evidence, however, is insufficient to confirm that the level of attention she has received reflects widespread commentary and acceptance of her work, or that the field of special education has regarded her research as authoritative. The Petitioner’s letters do not contain specific, detailed information explaining the unusual influence or high impact her research or work has had on the overall field. Letters that specifically articulate how a petitioner’s contributions are of major significance to the field and its impact on subsequent work add value.³ On the other hand, letters that lack specifics and use hyperbolic language do not add value,

³ See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8-9.

and are not considered to be probative evidence that may form the basis for meeting this criterion.⁴ Moreover, USCIS need not accept primarily conclusory statements. *1756, Inc. v. The U.S. Att’y Gen.*, 745 F. Supp. 9, 15 (D.C. Dist. 1990).

Regarding her citations, the Petitioner initially provided evidence from *Google Scholar* reflecting 221 cumulative citations. Specifically, the record shows that her four highest cited articles received 60 (*Genes and Immunity*), 45 (*Journal of Leukocyte Biology*), 36 (*Journal of Biological Chemistry*), and 23 (*The Journal of Immunology*) citations, respectively.⁵ Within its RFE response, the Petitioner submitted updated information from *Google Scholar* reflecting 267 cumulative citations. Moreover, the articles indicated above contained the following revised citation figures: 67 (*Genes and Immunity*), 51 (*Journal of Leukocyte Biology*), 36 (*Journal of Biological Chemistry*), and 29 (*The Journal of Immunology*). On appeal, the Petitioner presents further citation numbers from *Google Scholar* showing 292 cumulative citations, including 71 (*Genes and Immunity*), 51 (*Journal of Leukocyte Biology*), 37 (*Journal of Biological Chemistry*), and 29 (*The Journal of Immunology*). The Petitioner did not establish how many of the citations occurred in papers published after the filing of her original petition.

Notwithstanding the above, this criterion requires the Petitioner to establish that she has made original contributions of major significance in the field. Thus, the burden is on the Petitioner to identify her original contributions and explain why they are of major significance in the field. Generally, citations can serve as an indication that the field has taken interest in a petitioner’s research or written work. However, the Petitioner has not sufficiently shown that her citations for any of her published articles are commensurate with contributions of major significance. Here, the Petitioner did not articulate the significance or relevance of the citations to her articles. Although her citations are indicative that her research has received some attention from the field, the Petitioner did not demonstrate that her citation numbers to her individual articles represent majorly significant contributions in the field.⁶

In addition, the record indicates that the Petitioner submitted articles and excerpts of articles that cited to her work. A review of those articles, though, does not show the significance of the Petitioner’s research to the overall field beyond the authors who cited to her work.⁷ For instance, the Petitioner provided a partial article entitled, [REDACTED] (*Immunological Reviews*), in which the author cited to her highest cited article (*Genes and Immunity*).⁸ However, the article does not distinguish or highlight the Petitioner’s written work from the over 205 other cited papers. In the instant case, the Petitioner has not shown that her published articles through citations rise to a level of “major significance” consistent with this regulatory criterion.

⁴ *Id.* at 9. See also *Kazarian*, 580 F.3d at 1036, *aff’d in part*, 596 F.3d at 1115 (holding that letters that repeat the regulatory language but do not explain how an individual’s contributions have already influenced the field are insufficient to establish original contributions of major significance in the field).

⁵ The Petitioner’s remaining 16 articles received between 1 and 14 citations, with 5 articles garnering no citations.

⁶ See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8-9 (providing an example that peer-reviewed articles in scholarly journals that have provoked widespread commentary or received notice from others working in the field, or entries (particularly a goodly number) in a citation index which cite the individual’s work as authoritative in the field, may be probative of the significance of the person’s contributions to the field of endeavor).

⁷ *Id.* at 8-9; see also *Visinscaia v. Beers*, 4 F. Supp. 3d 126, 134-35 (D.D.C. 2013) (upholding a finding that a ballroom dancer had not met this criterion because she did not corroborate her impact in the field as a whole).

⁸ Although we discuss a sample article, we have reviewed and considered each one.

Likewise, the record contains evidence of her attendance and participation at conferences but did not demonstrate how they resulted in contributions of major significance in the field. Publications and presentations are not sufficient under 8 C.F.R. § 204.5(h)(3)(v) absent evidence that they were of “major significance.” *See Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009), *aff’d in part*, 596 F.3d at 1115. In this case, the Petitioner has not established that a presentation at a conference alone demonstrates a contribution of major significance in the field.

Further, the Petitioner claims that she meets this criterion because she has received funding from governmental agencies to conduct her research. While the Petitioner's research is no doubt of value, it can be argued that any research must be shown to be original and present some benefit if it is to receive funding and attention from the education community. Every research adds information to the pool of knowledge in some way for it to be accepted for publication, presentation, or funding. It does not follow that every researcher who performs original research that adds to the general pool of knowledge has inherently made a contribution of “major significance” to the field as a whole. To demonstrate that the Petitioner has met this criterion, she must offer evidence that after the completion of the study, or the publication or presentation of the findings, the reaction to her work confirms that it has remarkably impacted or influenced the field as a whole. Here, the Petitioner has not submitted such evidence.

For the reasons discussed above, considered both individually and collectively, the Petitioner has not shown that she has made original contributions of major significance in the field.

III. CONCLUSION

The Petitioner has not submitted the required initial evidence of either a one-time achievement or documents that meet at least three of the ten criteria. As a result, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. Nevertheless, we advise that we have reviewed the record in the aggregate, concluding that it does not support a finding that the Petitioner has established the acclaim and recognition required for the classification sought.

The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward the top. USCIS has long held that even athletes performing at the major league level do not automatically meet the “extraordinary ability” standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm’r 1994). Here, the Petitioner has not shown that the significance of her work is indicative of the required sustained national or international acclaim or that it is consistent with a “career of acclaimed work in the field” as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate that the Petitioner has garnered national or international acclaim in the field, and she is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2). Although the Petitioner has reviewed papers for journals and has authored scholarly articles, the Petitioner has not established that her professional accomplishments have placed her among the upper level of her field.

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.