



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

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 13011510

Date: FEB. 25, 2021

Appeal of Nebraska Service Center Decision

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

The Petitioner, an academic medical center, seeks to classify the Beneficiary as an individual 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 although the record established that the Petitioner satisfied the initial evidentiary requirements, it did not establish, as required, that the Beneficiary has sustained national or international acclaim and is an individual in the small percentage at the very top of the field. The matter is now before us on appeal.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. 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)(A) of the Act makes immigrant visas available to aliens 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 international recognition of a beneficiary's 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 it must provide sufficient qualifying documentation that meets at least three of the ten criteria 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's evidence meets these initial 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 beneficiary 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).

II. ANALYSIS

The Beneficiary trained in India and the United Kingdom and undertook residencies at [redacted] Hospital before a three-year fellowship at [redacted] Michigan. Since 2017, the Beneficiary has worked for the Petitioner as a [redacted] critical care specialist.¹ He is the chair and medical director of the Petitioner's [redacted] Critical Response and Resuscitation Committee, and director of *Medical Simulations in the Petitioner's* [redacted] Intensive Care Unit. He is also an assistant professor of [redacted] at [redacted] University, which has a medical school affiliated with the Petitioner.

Because we agree with the Director that the Petitioner submitted the required initial evidence, we will evaluate whether it has demonstrated, by a preponderance of the evidence, the Beneficiary's sustained national or international acclaim and that he is one of the small percentage at the very top of the field of endeavor, and that his 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 their successes are sufficient to demonstrate that they have 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 1119-20.² In this matter, we determine that the Petitioner has not established the Beneficiary's eligibility.

The Petitioner asserts:

[The Beneficiary] is a nationally renowned [redacted] Critical Care Specialist [redacted] Intensivist and researcher who specializes in the field of pediatric critical care

¹ The Petitioner previously filed an immigrant petition on the Beneficiary's behalf in October 2013, seeking to classify the Beneficiary as a member of the professions holding an advanced degree under section 203(b)(2)(A) of the Act. That petition was approved in November 2013.

² See also 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 4 (Dec. 22, 2010), <https://www.uscis.gov/legal-resources/policy-memoranda> (stating 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 for the immigrant classification).

medicine, dealing with critically ill [redacted] He has achieved sustained national acclaim as a recognized authority on [redacted] cardio therapy issues, congenital heart disease, medical simulations for [redacted] Intensive Care Units, and the use of vasoactive-ventilation-renal scores to achieve reliable predictions of post-operative outcomes for [redacted] undergoing cardiac surgery.

In denying the petition, the Director stated that the Petitioner did not show that the Beneficiary has earned sustained national or international acclaim for his work at the petitioning institution. The Director also acknowledged the Beneficiary's published articles, but concluded that the Petitioner had not submitted comparative evidence to show that others have cited the Beneficiary's articles at a rate "commensurate with sustained national or international acclaim." For example, a Google Scholar printout in the record shows 13 citations of the Beneficiary's most-cited article as of August 2019; on appeal, the Petitioner has not submitted evidence demonstrating that such a citation rate is noteworthy within the field.

The Petitioner notes the impact factors of the journals that published the Beneficiary's articles, but does not show that those articles have had an impact or otherwise stood out in a manner that would show that the Beneficiary is an acclaimed researcher at the top of his field. The reputation of a given journal does not establish or imply acclaim for individual researchers whose work appears in that journal. The Beneficiary's authorship of articles indicates that he is an active contributor in his specialty, but does not rise to the higher level of establishing sustained national or international acclaim or place him among the small percentage at the very top of his field. Much of the record points to the same conclusion. For instance, the Petitioner asserts that the Beneficiary obtained "extensive experience reviewing and judging the work of others in his field . . . due to his national acclaim and experience as one of the top [redacted] clinical care specialists in the nation," but the record does not indicate that his judging activity goes beyond routine peer review of manuscripts and evaluation of subordinates and job candidates.

The Petitioner states that the Beneficiary's "pioneering original research . . . has led to groundbreaking findings" that affect the care of [redacted] patients with serious and life-threatening conditions. The record lacks documentary evidence to establish that the Beneficiary's contributions have earned him sustained national or international acclaim. Instead, the Petitioner relies heavily on letters from individuals with demonstrable connections to the Beneficiary, and whose first-hand knowledge of the Beneficiary's work does not imply wider recognition.

Individuals who have employed, trained, or collaborated with the Beneficiary assert that he has made valuable contributions to his field, but the record does not show that these contributions have resulted in field-wide recognition tantamount to national or international acclaim. For example, the vasoactive-ventilation-renal (VVR) score is a clinical tool used to predict length of hospital stay and treatment outcome for [redacted] patients who undergo cardiac surgery. The Petitioner states that the Beneficiary's "research demonstrated that the VVR score is a reliable measure of critical illness severity in [redacted] patients and was therefore recognized as one of the Top 10 Contributions to Cardiology in 2019 by AvidScience."

However, the Petitioner's statement conflicts with evidence submitted. The record includes a partial printout of the ebook Top 10 Contributions on Cardiology. The printout does not indicate that the contributions were "recognized . . . by AvidScience." Rather, the ebook is a compilation of excerpts

of scholarly articles, and Avid Science is the ebook's open source publisher. The record sheds no light on who compiled the book, or the criteria they used when selecting contributions. The use of the phrase "Top 10" does not establish a broad consensus, and the record lacks evidence of the ebook's readership or reputation within the field. The Petitioner refers to the book as a "textbook," but the record does not document the book's use in this manner.

Furthermore, Chapter 9 of that book, "VVR Score Predicts Intensive Care Unit Length of Stay in Patients Undergoing Re-entry Sternotomy," is not an article by the Beneficiary. Instead, the Beneficiary was a co-author of one of the 26 source articles cited in the bibliography. The cited article described the outcome of a study that "sought to validate" the VVR score. The record shows that the Beneficiary refined the VVR score, but did not originate it; he is not named as a co-author of the earliest articles about it. Thus, while his work on it is undisputed, the record does not demonstrate that accolades given to the VVR score reflect acclaim and recognition of the Beneficiary's work.

A professor at [redacted] University School of Medicine, who was the corresponding author of the paper that introduced the VVR score, states that the Beneficiary initially participated in a project involving the petitioning institution "along with six other institutions," with "eight additional institutions . . . recruited" for a second study; the study program "currently involves 21 centers in the United States." The Director did not dispute the overall importance and impact of this multi-institutional study, but it does not follow that every participant has earned national or international acclaim as a result, and the leader of the project does not explain how the Beneficiary, in particular, achieved acclaim through his participation.

As another example of discussion of the Beneficiary's impact, one of the Beneficiary's mentors states that the Beneficiary co-wrote an article that "was referenced in the [redacted] Cardiac Intensive Care Society's 2014 Consensus Statement, [redacted] . . . [which] demonstrates that [the Beneficiary's] research has been used to establish treatment protocols." The record does not include a copy of the consensus statement or establish its influence and implementation, and thus does not support the mentor's statement on the impact and recognition of the Beneficiary's work by the field.

The Petitioner's statements regarding the significance of the Beneficiary's achievements often go beyond what the record reliably supports. For example, in its initial submission, the Petitioner quoted a letter in the record as follows: "Because of his expertise and acclaim [the Beneficiary] is one of only a few physicians from the State of Ohio selected to be a member of the American Heart Association's planning and steering committee." The Petitioner described this committee as a "scientific or professional association," but it was a group that convened temporarily in order to organize one particular medical conference at the regional level (attracting attendees "from Ohio, Pennsylvania and Kentucky"). The individual who provided the quotation does not claim to have been involved in the selection of steering committee members, and does not explain how she is otherwise in a position to attest to the selection process.³ The Petitioner does not submit first-hand evidence from the American Heart Association to show how it selected steering committee members.

³ The Petitioner misattributes this quotation to the letter marked as exhibit 33. The quoted passage actually appears in a different letter, marked as exhibit 15, from an individual who co-authored a paper with the Beneficiary. Her curriculum vitae does not mention membership in the American Heart Association; her specialty is anesthesiology.

The Petitioner asserts that the Beneficiary's membership as a "Fellow" of the American College of Critical Care Medicine "is of particular importance," because it "recognizes individuals who have demonstrated significant contributions and have made an impact in the critical care profession at a regional, state, or national level." However, the record does not identify the Beneficiary's contributions that qualified him for this level of membership or indicate that those contributions impacted the field at a national level. The Beneficiary's "Fellow" status does not imply or create any presumption that he has had a national impact, because impact "at a regional [or] state . . . level" are sufficient to qualify for that status. Therefore, the Beneficiary's satisfaction of a requirement for "impact . . . at a regional, state, or national level" does not rise to the level of national or international acclaim that the statute and regulations require.

The Petitioner submits letters from individuals who assert that the Beneficiary has achieved sustained national or international acclaim, but the objective, documentary evidence of record does not provide consistent or reliable support for these assertions. The record as a whole portrays the Beneficiary as a diligent and productive member of his profession, but does not rise to the much higher level necessary to place the Beneficiary among the small percentage at the very top of his field.

III. CONCLUSION

The Petitioner seeks a highly restrictive visa classification for the Beneficiary, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward the top. U.S. Citizenship and Immigration Services 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 recognition of the Beneficiary's work is indicative of the required sustained national or international acclaim or demonstrates 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 Beneficiary 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).

For the reasons discussed above, the Petitioner has not demonstrated the Beneficiary's eligibility as an individual of extraordinary ability.

The appeal will be dismissed for the above stated reasons. 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. The Petitioner has not met that burden.

ORDER: The appeal is dismissed.