



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

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

In Re: 15508867

Date: JUN. 8, 2021

Appeal of Nebraska Service Center Decision

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

The Petitioner, an engineering services company, seeks to classify the Beneficiary, an engineer and data scientist, 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 the record did not establish that the Petitioner had satisfied at least three of ten initial evidentiary criteria, as required. 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 individuals 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 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 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

While he was a graduate student at the [REDACTED], the Beneficiary co-wrote 15 journal articles and conference presentations. After the Beneficiary received his doctorate in late 2016, the Petitioner hired him as a senior engineer in its [REDACTED] division, working with technology related to [REDACTED]. The Petitioner states that the Beneficiary’s duties entail “developing predictive analysis models to improve [REDACTED] in buildings,” “designing regression models [REDACTED], designing complex software and hardware applications, and tracking and maintaining assets.”

Because the Petitioner has not indicated or shown that the Beneficiary received a major, internationally recognized award, the Petitioner must submit evidence to satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x). The Petitioner initially claimed to have satisfied four of these criteria, summarized below:

- (iv), Participation as a judge of the work of others;
- (v), Original contributions of major significance;
- (vi), Authorship of scholarly articles; and
- (viii), Leading or critical role for distinguished organizations or establishments.

The Director concluded that the Petitioner met two of the criteria, numbered (iv) and (vi). On appeal, the Petitioner asserts that it also meets the other two claimed criteria.

Upon review of the record, we agree with the Director that the Petitioner has satisfied only two claimed criteria. We will discuss the other claimed criteria below.

*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)*

On appeal, the Petitioner asserts that the Beneficiary “is internationally recognized for his groundbreaking developments in the field of risk analysis and probabilistic modeling for [redacted] [redacted] [The Beneficiary] is internationally acclaimed for developing simulation [redacted] models that allow the designer to evaluate the [redacted] impacts of [redacted]” The Petitioner quotes at length from three previously submitted letters, and contends that these letters, and others in the record, are credible evidence of the Beneficiary’s impact on the field, to which the Director did not give enough consideration and weight.

To determine whether a petitioner has met their burden under the preponderance standard,<sup>1</sup> we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010); *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm’r 1989). The very submission of letters signed by third parties does not satisfy any evidentiary burden or otherwise create a presumption of eligibility. Rather, we must consider the content of the letters.

Each letter includes one or more paragraphs of highly technical language describing the nature of the Beneficiary’s work, either preceded or followed by general assessments that the contributions thus described are of major significance in the field. Presenting the information in this way, however, does not explain why or how the Beneficiary’s contributions are of major significance. Explaining the significance of the Beneficiary’s work is not simply a matter of describing that work.

Also, in many instances the technical language in the letters is not simply the letter writer’s summary of the Beneficiary’s work. Rather, the letters include lengthy passages copied from the Beneficiary’s articles, presented without attribution, and slightly modified in a manner that obscures their origin. For example, a letter signed by the chair of [redacted]’s School of [redacted] includes this passage:

The significance of this research is that [the Beneficiary] and his co-authors defined and simulated the standard construction details and inferred the uncertainty range of [redacted] [redacted] effects with the limited in situ data that is available. Results of [redacted] simulations seem to suggest construction detail design will have a relatively large impact on the [redacted] properties of the [redacted]

The above passage is mostly identical to wording on page 2232 of a 2014 conference paper by the Beneficiary, which is in the record:

We defined and simulated the standard construction details and inferred the uncertainty range of [redacted] effects with the limited in situ data that is available. The [redacted] simulations lead to the following

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<sup>1</sup> Under this standard, a petitioner must show that what it claims is “more likely than not” or “probably” true.

conclusions: (1) Construction detail design will have a relatively large impact on the [redacted] properties of the [redacted] . . .

There are other shared passages as well, but the above example serves to demonstrate the point.

Another letter, signed by an associate professor at [redacted] University, includes this passage:

[The Beneficiary] modeled the mean profiles and variability of [redacted] (presence and actions) separately. He used a [redacted] distribution to generate mean profiles of [redacted], while the variability will be represented by a [redacted] series model, within a framework [redacted] that synthesizes [redacted] data gathered from [redacted] [The Beneficiary] also presented the variants of [redacted] models with respect to various outcomes of interest such as [redacted] behavior via a sensitivity analysis. Simulation results in [the Beneficiary's] work suggest that the approach is able to generate [redacted] profiles, requiring minimum additional input from the [redacted] modeler other than standard diversity profiles.

. . . Another practical contribution of this work is the realization that accurate knowledge of the mean profiles is sufficient – that is, [redacted] models do not play a significant role in the prediction of [redacted] [redacted] where the interaction between the operation of [redacted] systems and the spatial and temporal variability [redacted] is weak. When it comes to [redacted] behavior, [redacted] should be taken into account, as static profiles are not able to produce adequate estimates of [redacted] probabilities close to the [redacted] peak.

The above language is taken almost word-for-word from the abstract of a 2016 article by the Beneficiary, reproduced in the record:

In this paper, we model the mean profiles and variability of [redacted] (presence and actions) separately. We will use a [redacted] distribution to generate mean profiles of [redacted] while the variability will be represented by a [redacted] series model, within a framework [redacted] that synthesizes [redacted] data gathered from [redacted] We then discuss variants of [redacted] models with respect to various outcomes of interest such as [redacted] behavior via a sensitivity analysis. Results show that our approach is able to generate [redacted] profiles, requiring minimum additional input from the [redacted] modeler other than standard diversity profiles. . . . Such a finding . . . proves that accurate knowledge of the mean profiles is sufficient, that is, [redacted] models do not play a significant role in the prediction of [redacted] [redacted] where the interaction between the operation of [redacted] systems and the spatial and temporal variability [redacted] is weak. When it comes to [redacted] behavior, [redacted] should be taken into account, as static profiles are not able to produce adequate estimates of [redacted] probabilities close to the [redacted] peak.

Nearly verbatim passages from the Beneficiary's own work cannot serve as independent evaluations of his work, and have little weight as corroborative evidence of major significance without explanations of the significance of such work.<sup>2</sup> This is a significant issue because those letters are central to the Petitioner's contentions about the significance of the Beneficiary's contributions.

The Petitioner also documents citation of the Beneficiary's published work, but the Petitioner has not submitted independent data to show how heavily the Beneficiary's work is cited relative to other published work in the same area. The record therefore lacks an objective basis for comparison to establish the significance of the citation figures.

The Petitioner has shown that the Beneficiary has made original scientific contributions, but has not established that those contributions are of major significance in the field.

*Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. 8 C.F.R. § 204.5(h)(3)(viii)*

The Petitioner asserts that, at [redacted] the Beneficiary "held a critical role as a Research Assistant in the [redacted] Lab." The director of that laboratory describes various projects in which the Beneficiary participated and courses that the Beneficiary taught, but does not explain how these roles were critical to the lab at the organizational level. Furthermore, the Petitioner submits background evidence to establish the distinguished reputation of [redacted] as a whole, and of its School of [redacted] but this evidence is general in nature and does not establish that the [redacted] Lab has a distinguished reputation in its own right. Because reputation is a function of outside perception, statements by an official of the lab are not sufficiently independent evidence that the lab has a distinguished reputation.

The Director determined that the Petitioner had not submitted objective evidence to show that the Beneficiary performed in a critical role at the institutional level for [redacted]. On appeal, the Petitioner does not directly address this conclusion. Instead, the Petitioner repeats earlier assertions that [redacted]'s [redacted] Lab is an internationally recognized leader" in its field. The Petitioner cites no evidence to support this claim except to state that the lab received government research grants. The Petitioner does not establish that the awarding of such grants is a sign of distinction in the field, rather than the expected result of meritorious grant applications.

The senior director of Engineering and Development at the Petitioner's [redacted] describes the Beneficiary's role there, stating: "As a data scientist . . . , [the Beneficiary] performs automation detection and diagnosis of [redacted] to drive common approaches to [redacted] to being more predictive through physical models and machine learning." The official cites the Beneficiary's co-authorship of three patent applications, and states that the Beneficiary developed "a machine learning based approach" for data capture that "will potentially save the company three (3) full time employees . . . and will serve as a solid cornerstone to all future digitally delivered service projects." The Petitioner

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<sup>2</sup> Other letters use similarly technical language to describe other articles by the Beneficiary, but those articles are not reproduced in the record for direct comparison with the letters describing them. As a result, the record does not show whether these letters, too, rely heavily on unattributed quotations from the Beneficiary's work.

does not submit an organizational chart or other information to establish the Beneficiary's position within the division or the company as a whole.

With respect to distinguished reputation, the Petitioner submits printouts from the website of the [redacted] [redacted] division, but that website consists of promotional material intended to persuade prospective clients, rather than objective evidence of the division's reputation. On appeal, as above, the Petitioner repeats its prior assertion that its "division of [redacted] is a leading provider of automation technologies and services for [redacted]". The Petitioner also quotes extensively from the company official's previously submitted letter, which is not independent evidence of the division's reputation.

The Petitioner has not established that the Beneficiary meets the requirements of this criterion.

### 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 lesser 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 conclusion that the Petitioner has established the acclaim and recognition required for the classification sought.

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 Petitioner 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). The Beneficiary's activities as a judge of the work of others do not appear to extend beyond routine peer review, and the Petitioner has not shown that the Beneficiary's published work has had an impact commensurate with sustained national or international acclaim. The Beneficiary has made valuable contributions at [redacted] and then at the petitioning company, but the Petitioner has not shown that these contributions have earned recognition that would place the Beneficiary in the small percentage at the very top of that field.

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.

**ORDER:** The appeal is dismissed.