



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

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

In Re: 12636294

Date: MAR. 19, 2021

Appeal of Nebraska Service Center Decision

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

The Petitioner, a radiology practice, 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 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

The Petitioner is a radiology clinic affiliated with the University [REDACTED]. The Beneficiary earned a Ph.D. degree in Biochemistry from [REDACTED] University in 2006, and then held postdoctoral positions at [REDACTED]; the University [REDACTED] and the University of [REDACTED]. The Beneficiary then earned an M.D. degree from [REDACTED] University in 2014, and served a residency in radiology from 2014 to 2019. From 2019 to 2020, in H-1B nonimmigrant status, the Beneficiary undertook a fellowship in [REDACTED] radiology with [REDACTED]. The Petitioner seeks to employ the Beneficiary as an [REDACTED] radiologist, and states that the “position . . . combines clinical treatment with research.”

Because the Petitioner has not indicated or shown that the Beneficiary received a major, internationally recognized award, it must 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 three of these criteria, summarized below:

- (ii), Membership in associations that require outstanding achievements;
- (v), Original contributions of major significance; and
- (vi), Authorship of scholarly articles.

The Director concluded that the Petitioner's evidence met only one criterion, numbered (vi), relating to authorship of scholarly articles.¹ On appeal, the Petitioner asserts that its evidence meets all three claimed criteria.

As discussed below, upon review of the record, we agree with the Director that the record establishes the Beneficiary's authorship of scholarly articles, but does not satisfy the required three criteria.

¹ We note that only one of the Beneficiary's articles relates to his current field of radiology. This issue would have merited deeper discussion during the final merits determination, had the record warranted proceeding to that stage.

Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.
8 C.F.R. § 204.5(h)(3)(ii)

Chapter 22.2 of the *Adjudicator's Field Manual* reads, in pertinent part:

Relevant factors that may lead to a conclusion that the alien's membership in the associations was not based on outstanding achievements in the field include, but are not limited to, instances where the alien's membership was based:

- Solely on a level of education or years of experience in a particular field;
- On the payment of a fee or by subscribing to an association's publications; or
- On a requirement, compulsory or otherwise, for employment in certain occupations, such as union membership or guild affiliation for actors.²

In denying the petition, the Director stated that *any* organization that requires payment of a membership fee “do[es] not meet the elements of this criterion.” This conclusion derives from an incomplete reading of the *Manual*. Organizations for which the *only* membership requirement is payment of a fee do not qualify, but we must consider each membership based on *all* the membership requirements.

That being said, the Petitioner has not established that the Beneficiary holds any qualifying memberships, as we explain below.

Initially, the Petitioner claimed only one of the Beneficiary's memberships under this criterion, specifically his status as a Fellow of the [redacted] College of Physicians and Surgeons [redacted]. [redacted] documentation in the record states: [redacted] College certification attests to the fact that the Certificant has met the highest [redacted] College standards of assessment for the Certificant's specialty or subspecialty discipline. . . . Those who hold [redacted] College certification are eligible to apply for admission to Fellowship.” The materials list no particular traits or accomplishments that a certificant must establish in order to qualify for fellowship. Once admitted to fellowship, fellows must participate in the Maintenance of Certification program, which is “designed to ensure the highest standards in specialty medicine.” General references to meeting “the highest standards” do not establish that the [redacted] requires outstanding achievements of its members, and the submitted materials do not show that applicants' achievements are judged by recognized national or international experts as part of the application process. The submitted materials indicate that the [redacted] judges candidates for certification by their *credentials*, rather than their *achievements*, and there is no indication that fellowship requires a higher level of achievement, rather than a commitment to pursue continuing education in a particular specialty.

Following a request for evidence, the Petitioner documented the Beneficiary's membership in three other associations: the Association of University Radiologists (AUR); the Radiological Society of North America (RSNA); and the American Association for Cancer Research (AACR). The Petitioner also asserted that the Beneficiary is a member of the Society of Skeletal Radiology (SSR), but did not submit evidence to support that claim.

² 6 USCIS Policy Manual Part E, retired *Adjudicator's Field Manual* Chapter 22.2(i)(1)(A), <https://www.uscis.gov/policymanual>.

We note that the Petitioner did not submit evidence to show when the Beneficiary joined the AUR, the RSNA, and the AACR. This omission is significant because the Petitioner did not mention any of these memberships in the initial filing, and the Petitioner must establish the Beneficiary's eligibility as of the petition's filing date. *See* 8 C.F.R. § 103.2(b)(1). If the Beneficiary joined the associations after the filing date, then those memberships cannot establish eligibility regardless of their membership requirements.³

Furthermore, the Petitioner has not shown that any of the Beneficiary's memberships meet the regulatory requirements. The various associations each have several different membership levels, and the submitted evidence (screen captures of the Beneficiary's member profiles) does not show which level of membership the Beneficiary holds in any of the associations.

According to AUR's bylaws, "[a]ll radiology faculty of an accredited medical school or of an institution with an ACGME-accredited radiology residency or fellowship program . . . will be eligible for full membership." Associate membership is open even to non-physicians, such as "computer support personnel, and radiology nurses and technologists" who do not typically hold M.D. degrees.

To become an active member of the RSNA, a radiologist must hold a recognized medical degree and board certification, and "reside in and practice in a North American country." There are no other listed requirements. Other RSNA membership categories have even lower membership requirements, open to medical students and to non-physicians such as nurses. Materials from the SSR's website show similar membership requirements, indicating that each candidate for full membership must be board certified in radiology and "devote at least 50% of his/her time to . . . professional practice."

The AACR's constitution establishes "seven classes of members," with student membership being available even to high school students. The submitted documentation indicates that "[a]ctive membership shall be open to qualified scientists of any nation who have [produced] original, peer-reviewed publications relevant to cancer and biomedical research." Publication of research is not inherently an outstanding achievement. Another membership class, honorary membership, is limited "to distinguished individuals who have made extraordinary contributions to the advancement of cancer research," but the Petitioner does not claim, or establish, that the Beneficiary is an honorary member of the AACR. Furthermore, the Petitioner has not shown that the AACR is an association in the field of radiology. The Beneficiary's eligibility for membership derives from his participation in cancer-related biomedical research before he attended medical school.

The Petitioner has not established that any of the Beneficiary's memberships require outstanding achievements, as judged by recognized national or international experts.

The Petitioner's evidence does not satisfy the above criterion, and the Petitioner has claimed only two other criteria. As a result, detailed discussion of the remaining criterion – 8 C.F.R. § 204.5(h)(3)(v),

³ *See Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1998) (a petitioner may not make material changes to a petition that has already been filed to make a deficient petition conform to requirements); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971) (a beneficiary must be eligible at the time of filing, rather than relying on qualifying factors that emerged after the filing date).

regarding original contributions of major significance in the field – cannot change the outcome of this appeal. Therefore, we reserve this issue.⁴

Although we will not discuss the Beneficiary’s contributions in detail, we observe that, of the four specific research contributions that the Petitioner calls the Beneficiary’s most notable, three relate to genetic disorders rather than radiology. This is an important consideration because the Petitioner specifically, and repeatedly, identifies the Beneficiary’s field as radiology, specifically in a clinical context relating to the practice of medicine. The Petitioner has not explained how genetic research, undertaken before the Beneficiary was a credentialed radiologist, amounts to contributions in the field of radiology. The Petitioner has neither established that, nor explained how, the Beneficiary would pursue genetic research at a radiology clinic. Section 203(b)(1)(A)(ii) of the Act requires the Petitioner to establish that the Beneficiary will continue to work in the area of claimed extraordinary ability, and section 203(b)(1)(A)(iii) of the Act requires substantial *prospective* (i.e., future) benefit to the United States. Past work in an area of research that the Beneficiary no longer pursues does not satisfy either of these statutory requirements, and the Petitioner has not established its relevance to the specific claim that the Beneficiary “possesses extraordinary ability in the field of Radiology.”

The Petitioner’s evidence does not satisfy at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

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, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward the top. Here, the Petitioner has not shown recognition of the Beneficiary’s work indicative of the required sustained national or international acclaim, and which 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). Much of the evidence of record predates the Beneficiary’s medical training, and is of uncertain relevance to the Beneficiary’s intended employment as a physician, specializing in MSK radiology.

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.

⁴ *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); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).