



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

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

In Re: 22678700

Date: OCT. 18, 2022

Appeal of Texas Service Center Decision

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

The Petitioner, who describes his job title as “biopsychosocial specialist,”¹ seeks classification 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 Texas 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 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; who seek to enter the United States to continue work in the area of extraordinary ability; and whose 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 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 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.

¹ The Petitioner provides the SOC (Standard Occupational Classification) code 11-9111, which corresponds to “Medical and Health Services Managers.”

Where a petitioner meets the initial evidence requirements through either a one-time achievement or meeting three lesser criteria, 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).

II. ANALYSIS

After earning medical degrees at various universities in Venezuela, the Petitioner established an obstetrical/gynecological (OB/GYN) practice in [redacted] Venezuela in 2010, and worked at [redacted] University Hospital [redacted], also in [redacted]. In that practice, the Petitioner stated: “I designed my own approach model . . . , which I named ‘Biopsychosocial Evaluation.’” The Petitioner stated that “biopsychosocial evaluation . . . is structured to evaluate three aspects as follows: biological, psychological, and family-social,” allowing for “a personalized action plan.” The Petitioner entered the United States as a B-2 nonimmigrant visitor in August 2014. The Petitioner is not licensed to practice medicine in the United States.² He does, however, hold several certifications and registrations in the health care field, as a medical assistant, surgical assistant, professional midwife, and medical sonographer. Since 2018, he has worked as a midwife and sonographer at [redacted] in [redacted] Florida.

Because the Petitioner has not indicated or shown that he received a major, internationally recognized award, he 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 eight of these criteria, summarized below:

- (i), Lesser nationally or internationally recognized prizes or awards;
- (ii), Membership in associations that require outstanding achievements;
- (iii), Published material about the individual in professional or major media;
- (iv), Participation as a judge of the work of others;
- (v), Original contributions of major significance;
- (vi), Authorship of scholarly articles;
- (vii), Display at artistic exhibitions or showcases; and
- (viii), Leading or critical role for distinguished organizations or establishments.

The Director concluded that the Petitioner met only one of the criteria, relating to authorship of scholarly articles. On appeal, the Petitioner asserts that he also meets five other criteria, relating to memberships, published material, participation as a judge, original contributions, and leading or

² In his initial statement, submitted with the petition, the Petitioner stated: “I will not rest until I obtain my MD license in this country so that I can fully pursue my profession and my passion.” On appeal, the Petitioner states: “I am continuing my education to obtain a license as MD.” The Petitioner does not specify what has prevented him from obtaining a license to practice medicine in the United States.

critical roles. The Petitioner does not contest the Director's conclusions regarding the criteria relating to prizes and display, and therefore we consider those issues to be abandoned.³

The Petitioner cites his intention to continue working in the area of claimed extraordinary ability, stating: "To my understanding, this forms part of part of one of the ten categories." But such an intention relates to a separate requirement, at section 203(b)(1)(A)(ii) of the Act and 8 C.F.R. § 204.5(h)(5).

Upon review of the record, we conclude that the Petitioner has satisfied two criteria, relating to authorship of scholarly articles and participation as a judge of the work of others. We will discuss the other claimed criteria below.

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).

The Petitioner claimed several memberships under this criterion. He is an "Active Member" of the Venezuelan Association for the Advancement of Science (AsoVAC, or AsoVac); an "Affiliated Member" of the Society of Obstetrics and Gynecology of Venezuela (SOGV); and an active member of the American College of Nurse Midwives (ACNM). As explained below, we agree with the Director's conclusion that the Petitioner has not shown that the associations have sufficiently restrictive membership requirements.

A translated letter from the secretary general of AsoVAC's Chapter reads, in part:

AsoVac accepts as members those professionals who complete a rigorous process of background screening where it is confirmed that the candidate is an individual who has exceptional achievements with research capabilities able to meet the provisions of Chapters V and VI of the Statutes of our organization. . . .

. . . [A]ll the information submitted is evaluated by an Expert Committee composed of the most important scientists who are members of the association.

AsoVAC's Statutes, also in the record, do not corroborate the above statement. The Statutes state: "In order to be an Active Member it is required to hold a Superior Education Degree and conduct research, promotion and diffusion activities of scientific and/or technical knowledge, and be solvent with the yearly fee." The Statutes also describe a separate membership category, "Honorary Members," "who deserve this distinction owing to their scientific work." Nominations for honorary membership are to be submitted to "the National Steering Committee," whereas individuals seeking active membership "request their registration . . . before the [local] Chapter Steering Committee."

³ See *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012) (stating that when a filing party fails to appeal an issue addressed in an adverse decision, that issue is waived). See also *Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005), citing *United States v. Cunningham*, 161 F.3d 1343, 1344 (11th Cir. 1998); *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (plaintiff's claims were abandoned as he failed to raise them on appeal to the AAO).

AsoVAC's governing documents do not establish that the association requires outstanding achievements, as judged by recognized national or international experts, as a condition for active membership, and they do not corroborate claims that stricter requirements exist for the level of membership that the Petitioner holds. Participation in research and payment of membership dues are not outstanding achievements. We note that the record indicates that the Petitioner joined AsoVAC as an active member in November 2000, when he was still a medical student. His admission at this early stage in his career does not readily suggest the exclusivity that the regulation requires.

SOGV documents list the following requirements for affiliated membership:

- A "Medical Doctor or Surgeon" degree, recognized by "the Venezuelan university authorities";
- Recognition as a specialist in OB/GYN, registered with the Venezuelan Medical Association;
- Submission of a résumé and "the Deontological Certificate issued by the corresponding Medical Association";
- Completion of a three-year "postgraduate course on Obstetrics and Gynecology";
- A letter of intention to become a member;
- Sponsorship by two full members;
- Up-to-date payment of Medical Association fees;
- Completion of "the Medical Census Form"; and
- Payment of registration fees.

The Petitioner did not establish that any of these requirements, which include what appear to be basic professional credentials, amount to outstanding achievements as judged by recognized national or international experts.

Regarding the Petitioner's active membership in ACNM, that organization's bylaws show no substantive requirement for active membership except an active or past credential as a certified midwife or certified nurse midwife. The Petitioner has not established that these certifications are outstanding achievements as judged by recognized national or international experts, rather than basic credentials for the occupation.

Beyond the above points, the record shows that the Petitioner did not join ACNM until December 30, 2021, several weeks after the Director issued a request for evidence (RFE) on December 8, 2021. The Petitioner must meet all eligibility requirements as of the petition's filing date. *See* 8 C.F.R. § 103.2(b)(1). In this case, the Petitioner filed his petition on November 15, 2021. Other issues aside, this December 2021 membership cannot retroactively establish eligibility as of the November 2021 filing date.

Also in response to the RFE, the Petitioner submitted a membership certificate from the Society of Diagnostic Medical Sonography (SDMS). The Petitioner has not submitted any evidence to show the SDMS's membership requirements, and therefore he has not established that the SDMS requires outstanding achievements of its members as judged by recognized national or international experts. Furthermore, the certificate indicates that the Petitioner joined the SDMS in 2021, but did not specify the exact date. Therefore, the document does not indicate that the Petitioner was already a member when he filed the petition in November 2021. Because the burden of proof is on the Petitioner, we will not presume that he joined the SDMS before the filing date. We note that he did not claim SDMS membership when he first filed the petition.

The Director determined that the Petitioner had not shown that the memberships described above meet the regulatory requirements to satisfy the criterion. On appeal, the Petitioner maintains that his memberships are qualifying, but cites no specific evidence to show that the Director erred in reaching the above conclusion. The Petitioner does refer to “Chapter V, Article 28” of AsoVAC’s Statutes, but the cited passage lists the membership categories, and states no requirements for active membership other than a qualifying college degree and involvement in research, while indicating that applications for active membership are filed with local chapters.

The Petitioner has not met the requirements to satisfy this criterion.

Published material about the alien in professional or major trade publications or other major media, relating to the alien’s work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation. 8 C.F.R. § 204.5(h)(3)(iii).

An article on the subject of [redacted] appeared in *Ciencia Médica al Día*. The article quotes the Petitioner, who stated that exercise offers a number of benefits but cautioned that some circumstances may limit physical activity. The Petitioner’s medical specialty is relevant to the subject of the article, but the article is not about the Petitioner, relating to *his* work in the field. Rather, the article, including the Petitioner’s quotation, consists of general advice and recommendations. Also, the Petitioner has not established that *Ciencia Médica al Día* qualifies as a professional or major trade publication or other major media. The Petitioner must establish that the circulation (online or in print) is high compared to other publications of its kind. 6 USCIS Policy Manual F.2 appendix, <https://www.uscis.gov/policymanual>. The Petitioner did not submit circulation or page view data. A printout from the magazine’s Facebook page shows 7854 followers; the Petitioner provided no comparative evidence to show that this is a high number for that type of publication in Venezuela.

The host of the [redacted] Television program [redacted] stated that the Petitioner “was invited to this prestigious program as a SPECIAL GUEST on multiple occasions” (emphasis in original), first on a monthly basis, but then weekly “due to the constant and countless calls from our audience.” The Petitioner submitted photographs from the program, but no transcripts or other materials to establish the full content of the broadcast material. The regulation does not simply require evidence that published material exists; the Petitioner must submit the published material itself. In the case of radio or television broadcasts, a transcript will suffice. See 6 USCIS Policy Manual, supra, at F.2 appendix. Because the Petitioner has not provided a transcript of the broadcast material, he has not shown that his television appearances constituted published material about him, rather than, as above, general medical advice. Also, the Petitioner has not provided the dates of the broadcasts, as required by 8 C.F.R. § 204.5(h)(3)(iii). We note that the three submitted photographs all appear to show the same broadcast.

In the RFE, the Director asked for evidence to show that the submitted materials meet the regulatory requirements to satisfy the criterion. The Petitioner’s response to the RFE did not address this criterion. The Director therefore concluded that the Petitioner had not satisfied this criterion.

On appeal, the Petitioner asks that the Director’s conclusion be “reconsidered,” but he does not explain how that conclusion is in error.

The Petitioner has not met the requirements to satisfy this criterion.

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 submitted two letters under this criterion. The first letter is from one [redacted], a physician who studied at the same medical school as the Petitioner. Some of [redacted] letter consists of general assertions about the importance of the Petitioner's work, without sufficient details to identify specific contributions by the Petitioner and explain how they are of major significance. For example, he states that the Petitioner's "innovative medical unit for the care of pregnant adolescents . . . makes available resources which did not previously exist in health centers, such as interactive workshops." This statement does not explain how the Petitioner's innovation is of major significance in the field, as opposed to more localized importance to a small number of patients in direct contact with the Petitioner or the center that employed him. Statistics about improved patient outcome at one hospital do not show implementation of the Petitioner's work beyond that one facility, and the letter does not establish that the Petitioner's work was solely or primarily responsible for the improvements.

[redacted] described and praised the Petitioner's "great Bio-psycho-social Assessment model that provides solutions to pregnant women," but he did not show that this model has been of major significance to the field as a whole, rather than the Petitioner's own patients. Furthermore, [redacted] claims no particular expertise in OB/GYN or biopsychosocial evaluation. Rather, he describes his specialty as "Obesity, Nutrition and Anti-Aging Medicine." Because he and the Petitioner practice different specialties, it is not readily evident that [redacted] possesses sufficient knowledge in the Petitioner's field to evaluate the significance of the Petitioner's contributions.

The second letter is from one [redacted] "a specialist in Gynecology and Obstetrics [and] Sonographer," specialties that more closely conform to the Petitioner's own areas of expertise. As with [redacted] letter, however, [redacted] did not establish the significance of the Petitioner's work beyond one institution. [redacted] stated that "the Bio-psycho-social Assessment of Pregnant Patients [is] a model used in the most important hospital in the city of [redacted] Implementation at one hospital does not show field-wide significance. She also noted the Petitioner's "offering of free sonography courses for postgraduate residents." [redacted] did not explain how these activities were of major significance throughout the field, rather than locally in [redacted] We acknowledge her assertion that there is a shortage of trained sonographers, but the record does not show that the Petitioner's work in this area has significantly alleviated that shortage, and [redacted] did not explain how providing training in existing technology constitutes an original contribution.

In the denial notice, the Director stated:

Evidence must demonstrate that the beneficiary's contributions are not only original, but that they are of major significance in the field. The evidence does not demonstrate the major significance of the petitioner's original contributions. The letters praise the petitioner's work as a physician and as a great OB/GYN but they do not show major contributions as a Biopsychosocial Specialist in the field of biological, psychological, and family-social and contributions related to scientific, scholarly, artistic or business fields.

On appeal, the Petitioner asserts that his prior work in OB/GYN and sonography should not be viewed separately from his work with biopsychosocial evaluation. This objection, however, does not establish the claimed major significance of biopsychosocial evaluation. The Petitioner states that he developed the technique, but he has not submitted evidence of its widespread adoption by others or otherwise shown its major significance. The Petitioner claims that his biopsychosocial evaluations reduced local mortality rates, but he does not establish that this reduction spread to a larger area, or that the rates have stayed low; the provided statistics span the years 2010 to 2014, years before the petition's filing date.

The Petitioner has not met the requirements to satisfy this criterion.

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 claims to have satisfied the requirements of this criterion through his work as a physician in the OB/GYN Service of [redacted]⁴

The Director concluded that the Petitioner had not shown his roles to have been leading or critical. On appeal, the Petitioner asserts that political conditions in Venezuela prevented him from receiving significant recognition, whereas, he contends, "any developed country would have awarded [him] with recognition of the highest honor."

The Petitioner submitted background materials about [redacted], but he did not claim to have performed in a critical role for the entire hospital. Because his role was focused on the OB/GYN Service, he must show that that department or division has a distinguished reputation. See 6 USCIS Policy Manual, supra, at F.2 appendix. The Petitioner has not submitted evidence to establish that [redacted] OB/GYN Service, in particular, has more than a local reputation. Without showing that the department or division has a distinguished reputation, more detailed discussion of the nature of his role within that department or division would serve no practical purpose in this proceeding.

The Petitioner has not met the requirements to satisfy this criterion.

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. 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 his work is

⁴ The Petitioner does not, on appeal, pursue an earlier claim that his work with the local [redacted] section of the Venezuelan Red Cross also constituted a critical role.

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 Petitioner’s colleagues in Venezuela regard him as a skilled physician who has helped many patients, but much of the Petitioner’s evidence indicates at most a degree of recognition within the State of He had been in the United States for over seven years at the time of filing, but the record does not establish that the U.S. medical community has adopted his biopsychosocial evaluation. He satisfied two of the threshold criteria at 8 C.F.R. § 204.5(h)(3), but neither of those criteria includes any intrinsic requirement of, or reference to, acclaim or recognition. Rather, he judged the work of medical students and published the results of medical research, both activities which appear to be routine in academia rather than privileges reserved for the most acclaimed professionals in the field. While the Petitioner has shown himself to be an able and dedicated physician in Venezuela, and has found ways to contribute in the United States without a license to practice medicine, he has not shown that his work has had a widespread and lasting impact on his field, and he has not otherwise established the sustained national or international acclaim that the statute and regulations require.

The Petitioner has not demonstrated eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.