



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

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

In Re: 22645775

Date: MAR. 14, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an oceanographer, 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 Texas Service Center denied the petition, concluding that the record did not establish that the petitioner met the initial evidentiary requirement for this classification through evidence of a one-time achievement or by meeting three of the criteria at 8 C.F.R. § 204.5(h)(3). The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

To establish eligibility as an individual of extraordinary ability, a petitioner (or anyone on the petitioner's behalf) must establish that they:

- Have extraordinary ability in the sciences, arts, education, business, or athletics;
- Seek to enter the United States to continue work in their area of extraordinary ability; and that
- Their entry into the United States will prospectively substantially benefit the United States.

Extraordinary ability must be demonstrated by evidence of sustained national or international acclaim as well as extensive documentation that their achievements have been recognized in the field. Section 203(b)(1) of the Act.

The implementing regulation further states that 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.” It also

sets forth a multi-part analysis. A petitioner can demonstrate international recognition of their achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If such evidence is unavailable, then they must alternatively provide evidence that meets at least three of the ten listed criteria, which call for evidence about other awards they may have received, published material about them in qualifying media, and their authorship of scholarly articles, among other types of evidence. 8 C.F.R. §§ 204.5(h)(2),(3).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination, assessing whether the record shows that the individual possesses the acclaim and recognition required for this highly exclusive immigrant visa classification. *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 postdoctoral associate at the University of [REDACTED]. She earned a Ph.D. in Oceanography from the University of [REDACTED] in 2019, and states that she intends to continue pursuing research in the area of chemical oceanography in the United States.

A. Evidentiary Criteria

Because the Petitioner has not indicated or established that she 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). The Director found that the Petitioner met two of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), relating to her authorship of scholarly articles and participation as a judge of the work of others, and we agree. On appeal, the Petitioner asserts that the Director “violated proper adjudication procedures.” After reviewing all of the evidence in the record, we find that she has not the initial evidentiary requirements for classification as an individual of extraordinary ability.

The Petitioner specifically notes on appeal that the Director used the incorrect gender pronoun when referring to her throughout the decision, and that she misidentified her field of endeavor as “cardiovascular and infectious diseases” at one point in the decision. Although these errors are regrettable and reflect a lack of care in the drafting of the decision, upon review we conclude that they were not material to the Director’s decision. Notably, the Director twice correctly identified the Petitioner’s field as oceanography, and specifically considered evidence which relates to that field.

While the Petitioner’s appeal does not address any further issues with the Director’s decision, we will briefly consider the evidence she submitted under the third evidentiary criterion she claimed.

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)

“Contributions of major significance” connotes that a petitioner’s work has significantly impacted the field. *See Visinscaia*, 4 F. Supp. 3d at 134. For example, a petitioner may show that the contributions

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

The Petitioner focused on two original contributions to the field of oceanography which she asserts are of major significance. The first of these is a revision she made to the [redacted] software which allows for calculations of hydrogen sulfide and ammonia related parameters in freshwater and saltwater. This work was published in the journal *Marine Chemistry* in 2017, and the record shows that at the time of the Petitioner's response to the Director's request for evidence (RFE) it had been independently cited by other researchers in 15 articles.¹ She also submitted three articles published by other research groups which specifically note that they used her revised version of [redacted] to perform calculations in their research. Noting these citations, the Petitioner's postgraduate supervisor at the University of [redacted] states in his 2020 reference letter that one group of researchers found her software to be "successful and accurate in its analysis."

While this evidence shows that the Petitioner's software update has been successfully implemented by other researchers, it does not sufficiently show that this implementation is widespread in the field of oceanography or has otherwise been of major significance to the field. For example, the Petitioner has not submitted evidence to show that 15 independent citations to her paper describing this work indicates that it has remarkably impacted other oceanography researchers. Also, in discussing this aspect of the Petitioner's work, [redacted] of the University of [redacted] indicates that the [redacted] software is popular and has been publicly available before the Petitioner introduced her revisions, and that these additions are broadly applicable and relevant to other researchers. But she refers to two of the three citing articles mentioned by [redacted] to support this statement, and therefore does not expand upon the evidence of the significance of this original contribution.

The second original contribution which the Petitioner focused on concerns her use of artificial intelligence to supplement the gathering of data on ocean acidification on the east coast of the United States. This work was published in *Journal of Geophysical Research: Oceans* in 2020, and the record indicates that at the time of the Petitioner's RFE response it had been independently cited in four articles by other researchers. Also in that RFE response, the Petitioner submitted a chart from Clarivate Analytics showing citation rates for scientific papers by field and year, asserting that all three of her papers published in 2020 were at or above the 0.1 percentile in the field of "Environment/Ecology." However, we first note that it is not clear when this chart was published, as the only date that appears is the copywrite date of 2020. As the Petitioner based her assertion on her citation figures from November 2021, it is not apparent that the chart accurately portrays the percentile ranking of citations to her papers at that time. In addition, the citation figures in this field as portrayed in the chart show little difference between the 0.01 percentile (21) and the 50 percentile (1), and it is therefore not apparent that placement in the higher percentiles is indicative of a contribution of major significance.

[redacted] also commented on this aspect of the Petitioner's work in his 2020 letter, noting that another research group used her findings to support their own conclusions. But a relatively small degree of implementation or impact in a field does not generally indicate that an original contribution is of major significance. And while [redacted] writes that the benefits of the Petitioner's research reach beyond the

¹ We do not include the citations in five papers authored by the Petitioner or one of her co-authors.

field of oceanography to the U.S. economy, those considerations are not relevant when determining the significance of her scientific contributions to the field.

Aside from these specific original contributions, the Petitioner also asserted that her body of work in the field of oceanography was itself of major significance. For example, in her RFE response, the Petitioner asserted that the growth in the total number of citations to her work was evidence of the significant impact of her work in the field, and compared her total number of citations to that of other early-career researchers. However, this criterion focuses on the significance of specific contributions to a field, as opposed to the final merits determination which requires evidence of recognition, acclaim and standing in the field. Whereas the former may be shown in part through citations relating to a specific contribution, the latter may be reflected in the entire body of a researcher's work, including their total number and rate of citation. Therefore, the evidence comparing the total citations of other researchers to the Petitioner's is not relevant to the analysis under this criterion.

Another set of evidence submitted by the Petitioner in support of this criterion were articles which reported on research projects in which she was involved. These articles were published on the websites and social media of the organizations through which the research was conducted, such as the University of [redacted] and the National Oceanic and Atmospheric Administration (NOAA). The Petitioner asserted that these types of articles report "only featured researches with significant contributions," but she did not submit evidence in support of this assertion. While the articles and related evidence verify the Petitioner's participation in this research, they do not aid in establishing that her work was of major significance to the field of oceanography.

Finally, we note that others in addition to [redacted] submitted reference letters in support of the petition. For example, [redacted] Institute of Marine Science notes that her research group cited to the Petitioner's work on the levels of carbon dioxide in the [redacted] and like [redacted] discussed the economic and environmental benefits of her work. And [redacted] of the U.S. Geological Survey commented on the Petitioner's research involving a chemical method of determining past water temperatures from coral skeletons, concluding that these studies evidence "scientific rigor and global significance." But while these letters highlight the importance of the Petitioner's research, they do not help to establish that it has been of major significance to the field of oceanography.

For all of the reasons given above, we conclude that the Petitioner has not established that her original scientific contributions are of major significance in her field, and therefore she does not meet 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 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 have reviewed the entire record and conclude that it does not establish that the Petitioner has 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 those 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 that she is one of the small percentage who have 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).

ORDER: The appeal is dismissed.