



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

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

In Re: 6620180

Date: APR. 29, 2020

Appeal of Nebraska Service Center Decision

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

The Petitioner, a medical center, seeks to classify the Beneficiary 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 Nebraska Service Center denied the petition, concluding that the Beneficiary had satisfied only one of the initial evidentiary criteria, of which he must meet at least three.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* 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) of the Act makes visas available to immigrants 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 sustained acclaim and the 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 categories 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 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). This two-step analysis is consistent with our holding that the “truth is to be determined not by the quantity of evidence alone but by its quality,” as well as the principle that we examine “each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.” *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

II. ANALYSIS

The Petitioner has employed the Beneficiary as a sports medicine physician since 2014.

A. Evidentiary Criteria

Because the Petitioner has not indicated or established that the Beneficiary has 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 Director found that the Beneficiary met only one of the evidentiary criteria relating to scholarly articles at 8 C.F.R. § 204.5(h)(3)(vi), discussed further below. On appeal, the Petitioner demonstrates that the Beneficiary participated as a judge of the work of others and performed in a critical role for it, thereby fulfilling 8 C.F.R. § 204.5(h)(3)(iv) and (viii).

Because the Petitioner has shown that the Beneficiary satisfies three criteria, we will evaluate the totality of the evidence in the context of the final merits determination below.¹

B. Final Merits Determination

As the Petitioner submitted the requisite initial evidence, we will evaluate whether it has demonstrated, by a preponderance of the evidence, the Beneficiary’s sustained national or international acclaim,² that

¹ *See* 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* 13 (Dec. 22, 2010), <https://www.uscis.gov/policymanual/HTML/PolicyManual.html> (providing that objectively meeting the regulatory criteria in part one alone does not establish that an individual meets the requirements for classification as an individual of extraordinary ability under section 203(b)(1)(A) of the Act).

² *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 14 (stating that such acclaim must be maintained and providing *Black’s Law Dictionary’s* definition of “sustain” as to support or maintain, especially over a long period of time,

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 his successes are sufficient to demonstrate that he has 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 1119-20.³ In this matter, we determine that the Petitioner has not shown the Beneficiary's eligibility.

The record reflects that the Beneficiary received his bachelor of medicine and bachelor of surgery (MBBS) from [redacted] University in [redacted] India in 2001.⁴ In addition, he completed a residency in family medicine with [redacted] in [redacted] Ohio in 2011. Further, he participated in a fellowship in geriatrics at [redacted] in 2012 and a fellowship in primary care sports medicine at State University of [redacted] in [redacted], New York in 2013. Moreover, as indicated above, the Petitioner has employed the Beneficiary as a sports medicine physician since 2014. As mentioned above, the Beneficiary judged others, authored scholarly articles, and performed in a critical role. The record, however, does not demonstrate that his personal and professional achievements reflect a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990).

Relating to the Beneficiary's service as a judge of the work of others, an evaluation of the significance of his experience is appropriate to determine if such evidence indicates the required extraordinary ability for this highly restrictive classification. See *Kazarian*, 596 F. 3d at 1121-22.⁵ The Petitioner submits evidence reflecting that the Beneficiary judged nine speakers for its continuing medical education (CME) committee from 2016 - 2018.⁶ However, the Petitioner did not establish that these instances place the Beneficiary among the small percentage at the very top of his field. See 8 C.F.R. § 204.5(h)(2). The commentary for the proposed regulations implementing section 203(b)(1)(A)(i) of the Act provide that the "intent of Congress that a very high standard be set for aliens of extraordinary ability is reflected in this regulation by requiring the petitioner to present more extensive documentation than that required" for lesser classifications. 56 Fed. Reg. 30703, 30704 (July 5, 1991). The Petitioner did not show, for example, how the Beneficiary's experience in reviewing speakers for its own committee, as well as recommending graduate medical students, compares to others at the very top of the field.

and to persist in making an effort over a long period of time).

³ *Id.* at 4 (instructing 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 of the immigrant classification).

⁴ The Petitioner provided evidence showing that the Beneficiary's MBBS is equivalent to a doctor of medicine degree in the United States. Furthermore, the Beneficiary satisfied the Educational Commission for Foreign Medical Graduates.

⁵ See also USCIS Policy Memorandum PM 602-0005.1, *supra*, at 13 (stating that an individual's participation should be evaluated to determine whether it was indicative of being one of that small percentage who have risen to the very top of the field of endeavor and enjoying sustained national or international acclaim).

⁶ The Petitioner also provided a 2010 letter from [redacted], residency program director at [redacted] who generally claimed that the Beneficiary was "also a member of our observership evaluation committee which screens foreign medical graduates applying for observership postings within our department." In addition, the Petitioner presented a letter from [redacted] graduate medical education official at [redacted] who broadly asserted that the Beneficiary "was able to make recommendations for choosing excellent candidates."

In addition, the Petitioner did not demonstrate that the Beneficiary's recent judging instances contribute to a finding that he has a career of acclaimed work in the field or indicative of the required sustained national or international acclaim. See H.R. Rep. No. at 59 and section 203(b)(1)(A) of the Act. The Petitioner did not establish, for instance, that the Beneficiary garnered wide attention from the field rather than limited to the Petitioner's own committee. Moreover, serving on a committee reviewing speakers does not automatically demonstrate that an individual has extraordinary ability and sustained national or international acclaim at the very top of his field. Without evidence that sets the Beneficiary apart from others in his field, such as evidence that he has a consistent history of reviewing or judging recognized, acclaimed experts in his field, serving in editorial positions for distinguished journals or publications, or chairing technical committees for reputable conferences, the Petitioner has not shown that the Beneficiary's judging experience places him among that small percentage who has risen to the very top of the field of endeavor. See 8 C.F.R. § 204.5(h)(2) and 56 Fed. Reg. at 30704.

Further, authorship and publication do not automatically place one at the top of the field.⁷ The record reflects that the Beneficiary authored an article in 2013 and 2016. However, the Petitioner did not demonstrate how the Beneficiary's limited publication record is consistent with having a career of acclaimed work and sustaining national or international acclaim. The Petitioner did not submit evidence showing the significance of the Beneficiary's authorships or how his publications compare to others who are viewed to be at the very top of the field. See H.R. Rep. No. at 59 and section 203(b)(1)(A) of the Act. Here, the Petitioner did not establish that the Beneficiary's authorships reflect being among the small percentage at the very top of his field. See 8 C.F.R. § 204.5(h)(2) and 56 Fed. Reg. at 30704.

Moreover, the citation history or other evidence of the influence of the Beneficiary's written work can be an indicator to determine the impact and recognition that his publications have had on the field and whether such influence has been sustained. For example, numerous independent citations for an article authored by the Beneficiary may provide solid evidence that his work has been recognized and that others have been influenced by his work. Such an analysis at the final merits determination stage is appropriate pursuant to *Kazarian*, 596 F. 3d at 1122. Here, the Petitioner provided 11 articles that cited to the Beneficiary's written work. While the citation of the Beneficiary's work shows that some in his field have noticed it, the Petitioner has not established that such citations are sufficient to demonstrate a level of interest in the field commensurate with sustained national or international acclaim. See section 203(b)(1)(A) of the Act. In addition, the Petitioner has not shown that the citation numbers represent attention at a level consistent with being among that small percentage at the very top of the Beneficiary's field. See 8 C.F.R. § 204.5(h)(2) and 56 Fed. Reg. at 30704.

In addition, the Petitioner provided recommendation letters that recount the Petitioner's research and findings and indicate their publications in two journals without demonstrating how they have influenced the field in a significant manner. For instance, [redacted] stated that the Beneficiary's "research contributes to promotion of expedited healing." However, [redacted] did not further elaborate and explain how the Petitioner's research or article contributed to promoting healing.

⁷ See also USCIS Policy Memorandum PM 602-0005.1, *supra*, at 13 (providing that publications should be evaluated to determine whether they were indicative of being one of that small percentage who has risen to the very top of the field of endeavor and enjoying sustained national or international acclaim).

Moreover, the letters speculate on the potential influence and on the possibility of being majorly significant at some point in the future. For example, [redacted] claimed that the Beneficiary's article "will impact my practice in a positive way and improve my quality of care," and [redacted] asserted that the "information summarized in this article will lay future foundation of progressive research in concussion evaluation and management." Here, the significant impact of the Beneficiary's work on the field has yet to be determined. Furthermore, the letters do not show that the Beneficiary is viewed by the overall field, rather than by a solicited few, as being among that small percentage at the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2). Moreover, the Petitioner did not establish that the Beneficiary has made impactful or influential contributions through his written work in the greater field reflecting a career of acclaimed work in the field, garnering the required sustained national or international acclaim. *See* H.R. Rep. No. at 59 and section 203(b)(1)(A) of the Act.

Further, the Petitioner submitted evidence reflecting that the Beneficiary presented his work at various conferences, such as the Family Medicine Education Consortium Northeast Region Meeting and American Medical Society for Sports Medicine. However, the Petitioner did not establish that the Beneficiary's presentations are consistent with having a career of acclaimed work and sustaining national or international acclaim. For instance, the Petitioner did not show the significance of the Beneficiary's presentations, how his overall presentations compare to others who are viewed to be at the very top of the field, or whether he received notoriety or wide attention based on his presentations. *See* H.R. Rep. No. at 59 and section 203(b)(1)(A) of the Act. In addition, the Petitioner did not demonstrate that the Beneficiary's presentations reflect being among the small percentage at the very top of his field. *See* 8 C.F.R. § 204.5(h)(2) and 56 Fed. Reg. at 30704.

As it relates to the Beneficiary's roles, as mentioned above, the Petitioner employs him as a sports medicine physician. In addition, the Beneficiary serves as its founder and director of the [redacted] clinic. Further, as indicated earlier, the Beneficiary co-chairs the Petitioner's CME committee. Although the Petitioner documented the Beneficiary's roles, it did not demonstrate that he garnered national or international acclaim in the field beyond his employer. *See* section 203(b)(1)(A) of the Act and 56 Fed. Reg. at 30704. For example, [redacted] president and chief executive officer for the Petitioner, discussed the importance of the [redacted] clinic to the area and indicated that it "is an integral part of the [Petitioner] and the creation of the clinic has driven the success of the institution as a whole," and "[i]t has helped to fill the gaps in the specialized medical service needs in the community." Here, [redacted] commented on the Beneficiary's limited, local impact to the Petitioner and surrounding community without showing how he or his work has been recognized on a national or international scale.

Likewise, although the Petitioner provided two reference letters from [redacted] indicating that the Beneficiary served as the education chief for the center and member of the observer selection committee, it did not establish that his roles or accomplishments garnered any acclaim from the field, including a level of attention consistent with being among that small percentage at the very top of the field. *See* 8 C.F.R. § 204.5(h)(2). Here, the Petitioner did not demonstrate that the Beneficiary's professional career spanning over ten years represents a career of acclaimed work and sustained national or international acclaim. *See* H.R. Rep. No. at 59 and section 203(b)(1)(A) of the Act. While the Beneficiary's letters praised his professional experience and accomplishments, they did not show how his roles resulted in acclaim beyond his employers, such as significant attention from the

greater field or that overall field considers him to be at the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2) and 56 Fed. Reg. at 30704.

The record as a whole, including the evidence discussed above, does not establish the Beneficiary's eligibility for the benefit sought. Here, the Petitioner seeks a highly restrictive visa classification for the Beneficiary, intended for individuals already at the top of their respective fields, rather than those progressing toward the top. Even major league level athletes do not automatically meet the statutory standards for classification as an individual of "extraordinary ability." *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994). While the Petitioner need not establish that there is no one more accomplished to qualify for the classification sought, we find the record insufficient to demonstrate that the Beneficiary has sustained national or international acclaim and is among the small percentage at the very top of his field. *See* section 203(b)(1)(A)(i) of the Act and 8 C.F.R. § 204.5(h)(2).

III. CONCLUSION

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, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.