



U.S. Citizenship
and Immigration
Services

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 9968165

Date: AUG. 12, 2020

Appeal of Nebraska Service Center Decision

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

The Petitioner, an assistant professor of chemistry, 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 Nebraska Service Center denied the petition, concluding that the Petitioner had satisfied only two of the initial evidentiary criteria, of which she 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)(A) 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).

II. ANALYSIS

The Petitioner indicates employment as an assistant professor of chemistry at the University [redacted] [redacted].¹ Because the Petitioner has not indicated or established that she has 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).

In denying the petition, the Director determined that the Petitioner fulfilled two of the initial evidentiary criteria, judging at 8 C.F.R. § 204.5(h)(3)(iv) and scholarly articles at 8 C.F.R. § 204.5(h)(3)(vi). The record reflects that the Petitioner reviewed papers for journals. In addition, she authored scholarly articles in professional publications. Accordingly, we agree with the Director that the Petitioner fulfilled the judging and scholarly articles criteria.

On appeal, the Petitioner asserts that she meets two additional criteria, discussed below. After reviewing all the evidence in the record, we conclude that the record does not support a finding that the Petitioner satisfies the requirements of at least three criteria.

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 claims she meets this criterion based upon her membership in the American Chemical Society (ACS).² In order to satisfy this criterion, the Petitioner must show that membership in the association is based on being judged by recognized national or international experts as having outstanding achievements in the field for which classification is sought.³

¹ The record reflects that the Petitioner accepted a job offer for the position of assistant professor of chemistry and biochemistry at [redacted] University [redacted] in April 2019, shortly after the petition was filed. See the Petitioner's curriculum vitae submitted at initial filing and job offer letter submitted within her response to the Director's request for evidence.

² The Petitioner previously claimed eligibility for this criterion based on her membership with other associations; however, she does not argue on appeal, nor does the record reflect, her eligibility based on those associations.

³ 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 6 (Dec. 22, 2010), <https://www.uscis.gov/policymanual/HTML/PolicyManual.html> (providing an example of admission to membership in the National Academy of Sciences as a Foreign Associate that requires individuals to be nominated by an academy

The Petitioner submitted evidence of her membership in the ACS and the ACS Governing Documents dated January 1, 2019. First, the documentation submitted does not establish that recognized national or international experts judge the outstanding achievements for membership with ACS.⁴ In addition, the Petitioner did not establish that the ACS membership requirements rise to the level of “outstanding achievements” consistent with this regulatory criterion. Instead, based on the presented documentation, ACS membership is open to those with only an earned associate or higher degree in a chemical science or related field of technology or relevant experience, which the Petitioner did not show is tantamount to an outstanding achievement.⁵ Although the Petitioner asserts that membership in the ACS is “restricted to those who have ‘conducted and published a meritorious original investigation in pharmacology,’” the language cited by the Petitioner does not appear in the submitted ACS Governing Documents, and she does not explain how having conducted and published “meritorious” original research is tantamount to an outstanding achievement.

For the reasons discussed above, the Petitioner did not show that she satisfies 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 maintains that she has performed in a leading or critical role as [redacted] at the national 2018 ACS Biennial Conference on Chemical Education (ACS BCCE). The Director concluded that the Petitioner did demonstrate her eligibility under this criterion, finding that the evidence did not show that she has served in a leading or critical role for an organization, “as opposed to mere departments, conferences, or various projects” within the organization.

A title, with appropriate matching duties, can help to establish if a role is or was, in fact, leading.⁶ Regarding a critical role, the evidence must demonstrate that a petitioner has contributed in a way that is of significant importance to the outcome of the organization or establishment’s activities. It is not the title of a petitioner’s role, but rather the performance in the role that determines whether the role is or was critical.⁷ In addition, this criterion requires that the organizations or establishments must be recognized as having a distinguished reputation, which is marked by eminence, distinction, or excellence.⁸ For the reasons outlined below, we find that the Petitioner has not submitted documentary evidence that sufficiently shows that she meets the regulatory requirements of this criterion.

First, as noted by the Director, the Petitioner has not shown that the ACS BCCE constitutes an organization or establishment. According to the documentation submitted, the ACS BCCE is a conference organized by ACS’s Biennial Conference Committee within the organization’s Division

member, and membership is ultimately granted based upon recognition of the individual’s distinguished achievements in original research).

⁴ See USCIS Policy Memorandum PM 602-0005.1, supra, at 7 (stating that the level of membership afforded to the alien must show that in order to obtain that level of membership, the alien was judged by recognized national or international experts as having attained outstanding achievements in the field for which classification is sought).

⁵ Id. (instructing that relevant factors that may lead to a conclusion that the alien’s memberships in the associations were 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).

⁶ See USCIS Policy Memorandum PM-602-0005.1, supra, at 10.

⁷ Id.

⁸ Id at 10-11.

of Chemical Education. While ACS may constitute an organization under this criterion, the Petitioner has not shown that a conference by a committee in a division within an organization, which has an unspecified number of divisions, committees, and other components, also constitutes an organization under this criterion.

Next, the Petitioner asserts that her role as [redacted] was “the main component of the organization’s performances” because “[e]ducational conferences are the only business of the organization.” The Petitioner’s claim, however, is not supported by the aforementioned ACS Governing Documents submitted by her, which indicate that in addition to educational conferences the organization’s activities include producing a number of peer-reviewed scientific journals and the Chemical Abstracts Service, a provider of chemical databases worldwide. Even if she had shown that educational conferences are the only business of ACS, the Petitioner has not demonstrated that [redacted] [redacted] at the ACS BCCE she played a leading or critical role for the organization as a whole.

The Petitioner presented a letter of support from [redacted] an organizer of the 2018 ACS BCCE. On appeal, the Petitioner maintains that the letter “is clear in defining the way the Petitioner’s role was considered leading, and specific duties and importance to the organization as a whole.” [redacted] letter asserted that ACS BCCE conference [redacted] are “the principal actors in an organized event targeted towards Chemistry Education professionals. Their role is vital as they are the ones that are sharing their innovations and experiences with others to help grow the field. Their participation is essential to the success of the entire endeavor.” The letter did not contain, however, detailed and probative information that specifically addressed how the Petitioner’s role was leading or critical for ACS. For instance, the letter did not explain how the Petitioner’s conference [redacted] role was leading among the organization’s staff such as its employees, officers, council, and board of directors, nor did the statement indicate that the Petitioner’s conference position was of significant importance for ACS’s success or standing in the industry so as to demonstrate a critical role.

In light of the above, the Petitioner did not demonstrate that she meets 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 advise that we have reviewed the record in the aggregate, concluding that it does not support a finding 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. 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 she 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). Although the Petitioner has reviewed manuscripts and authored scholarly articles the record does not contain sufficient evidence establishing that she is among the upper echelon in her field.

For the reasons discussed above, the Petitioner has not demonstrated her 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.