



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

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

In Re: 12798759

Date: DEC. 31, 2020

Appeal of Nebraska Service Center Decision

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

The Petitioner, an orthopedic surgeon, 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 Nebraska Service Center denied the petition, concluding that Petitioner had satisfied only two of the initial evidentiary criteria for this classification, of which he must meet at least three. The matter is now before us on appeal.

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, the Petitioner has not met this burden and 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 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).

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).

II. ANALYSIS

The Petitioner is an orthopedic surgeon who specializes in shoulder repair and reconstruction and upper extremity trauma. The Petitioner received his bachelor's degree at the University [redacted] and his Doctor of Medicine at [redacted] University in 2010. He concluded his residency through the University [redacted]'s orthopedic surgery training program in 2015 and subsequently completed a shoulder arthroscopy and reconstruction fellowship in [redacted] France, followed by a combined trauma and upper extremity fellowship at the University [redacted]. Since 2018, he has been employed by The [redacted] in Arizona.

A. Evidentiary Criteria

Because the Petitioner has not indicated or established that he 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 Petitioner claims to meet the following criteria:

- (v), Original contributions of major significance in the field;
- (vi), Authorship of scholarly articles in professional publications;
- (viii), Performing in a leading or critical role for distinguished organizations; and
- (ix), High salary or other significantly high remuneration in relation to others.

The Director determined that the Petitioner met two of the evidentiary criteria. The record reflects that the Petitioner has authored articles published in *Nature Medicine*, *Journal of Shoulder and Elbow Surgery* and other professional publications, as well as textbook chapters. Accordingly, we agree that he meets the criterion at 8 C.F.R. § 204.5(h)(3)(vi). The Director also determined that the Petitioner established that he has commanded a high salary in relation to others in his field, pursuant to 8 C.F.R. 204.5(h)(3)(ix). Based on evidence of the Petitioner's earnings with [redacted] in 2018, we will not disturb this determination.

On appeal, the Petitioner asserts that he also meets the two remaining claimed criteria and is otherwise eligible for the classification sought. 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.

Evidence of the individual'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 maintains that he has made several original contributions of major significance in his field as evidenced by his publication in journals and textbooks, citations to his work by other researchers, his participation in seminars and conferences, and testimonial letters. In order to satisfy the regulation at 8 C.F.R. § 204.5(h)(3)(v), a petitioner must establish that not only has he made original contributions but that they have been of major significance in the field.¹ For example, a petitioner may show that their 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.

On appeal, the Petitioner references his submission of letters from colleagues and other experts in orthopedic surgery regarding his original contributions in his field, asserting that the Director did not give sufficient weight to this evidence. The letters summarize the Petitioner's research achievements and some of them discuss its impact or potential impact in broad terms. However, they do not establish that his original contributions are already recognized as majorly significant within his field.

For example, [redacted] a professor of surgery at University [redacted] indicates that he knew the Petitioner during his residency and fellowship at the university and has collaborated with him on clinical cases, research studies and publications. He credits the Petitioner with the first study to examine "the outcomes of patients who have undergone operative treatment for elbow stiffness following [redacted] fractures," and states that he "was able to confirm that it is relatively safe to perform this procedure at an average of 18 months post-operatively."

[redacted] emphasizes that "[w]ith this knowledge in hand, orthopaedic surgeons from around the world are able to provide improved counseling and make evidence-based decisions when treating this unique patient population." However, this general statement regarding the influence of the Petitioner's study is not adequately supported in the record. For example, it is not clear whether the Petitioner has published an article, book chapter or presentation on this topic that has been cited by others. We cannot determine based on the limited information provided that this study remarkably influenced clinical practice for a specific patient population. [redacted] also mentions that the Petitioner, during his fellowship in France, learned a number of innovative and advanced techniques in shoulder and elbow surgery such as arthroscopic [redacted] repair and [redacted] shoulder arthroplasty, but he does not indicate that the Petitioner developed new surgical techniques or explain how his training in such existing techniques, however innovative or advanced, would be considered an original contribution of major significance in the field.

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 8-9* (Dec. 22, 2010), <https://www.uscis.gov/policymanual/HTML/PolicyManual.html> (finding that although funded and published work may be "original," this fact alone is not sufficient to establish that the work is of major significance).

[redacted] a professor of orthopedic surgery at University [redacted] and staff surgeon at [redacted] Hospital, states that he observed the Petitioner during his clinical fellowship, which followed his initial fellowship in France. He explains that, while in France, the Petitioner “developed a specialty interest” in shoulder arthroplasty techniques which are “cutting edge and not widely available.” Specifically, he states that the Petitioner “has made significant contributions to the field of Orthopedic Surgery through his work on shoulder arthroplasty [redacted] and arthroscopic [redacted] procedures.” [redacted] describes the procedures, explains why they are considered particularly innovative, and describes the substantial benefits to patients. He further opines that “[p]ossessing these skills is of major significance because so few other surgeons are able to perform these procedures, especially in the United States” and notes that the Petitioner’s “ability to describe and perform these complex procedures provides patients with state-of-the art care and the best possible outcomes.” However, like [redacted], the [redacted]’s letter does not establish that the Petitioner’s completion of specialty training in innovative techniques and his performance of these techniques amounts to an original contribution that has remarkably impacted or influenced his field. The record reflects that the Petitioner is a highly trained and skilled surgeon, but these traits do not lead to a conclusion that he has satisfied this criterion.

A letter from [redacted] an orthopedic surgeon who completed a specialty fellowship at The [redacted] also speaks to the Petitioner’s “extremely rare skill set, even for a specialty physician.” He notes that only a small number of orthopedic surgeons “go on to do specialty shoulder reconstruction fellowships” and that the Petitioner himself has completed two of the most prestigious fellowships available. [redacted] also describes the Petitioner’s “extensive experience and skill in performing the [redacted] procedure” noting that no more than ten surgeons in the [redacted] have a comparable amount of training and experience with this technique. However, as already discussed, having an unusual or unique skill set is not a contribution of major significance in-and-of-itself. Rather, the record must be supported by evidence that the Petitioner has already used those skills and abilities to impact the field at a significant level. We do not doubt that the Petitioner is well-equipped to offer highly specialized medical treatment to [redacted]’s patients. However, regardless of the field of endeavor, the plain language of the phrase “contributions of major significance in the field” requires evidence of an impact beyond one’s employer and clients or customers. *See Visinscaia v. Beers*, 4 F. Supp. 3d 126, 134-135 (D.D.C. 2013).

[redacted]’s letter also mentions the Petitioner’s research on reverse shoulder arthroplasty [redacted] surgery in fracture [redacted] patients. He notes that this research “has garnered international praise” and explains that, prior to the publication of the Petitioner’s study “patients with [redacted] fractures . . . were difficult to classify and treat.” In describing its significance, [redacted] states that the Petitioner’s study enabled classification of this patient population and suggested the most appropriate surgery based on this classification. The evidence demonstrates that the Petitioner co-authored a chapter titled [redacted] in the book *Shoulder Concepts: Reverse Shoulder Arthroplasty*, in 2016. According to the Petitioner’s curriculum vitae, he also presented this research at the 2016 [redacted] Course, at the [redacted] SECEC-ESSE Congress (where he received the [redacted] Award in 2017), and at the SOFCOT [redacted] Annual Meeting. [redacted] states that, as a result of the Petitioner’s study “we are able to better treat this complex patient population,” but the record lacks any additional evidence that the Petitioner’s study has already influenced clinical practices or has been received as a contribution of major impact or influence in the field. The fact that he was invited to present the work at three conferences supports

its originality and may speak to its potential importance, but the record does not contain, for example, evidence that his book chapter or conference presentations have garnered any citations.

Finally, the Petitioner submitted a letter from [redacted] who heads the University Institute of Locomotion and Sports at the University [redacted] and supervised the Petitioner's overseas fellowship in 2015 to 2016. [redacted] states that, during his fellowship, the Petitioner performed "profound and groundbreaking research" which focused on the results of patients who had undergone arthroscopic shoulder stabilization with a novel arthroscopic [redacted] technique. Specifically, he states that the Petitioner demonstrated that the technique "provides low rates of recurrence of instability, with a low complication rate and high patient satisfaction." [redacted] emphasizes that "this research was very important to the field of orthopaedics" and notes that, as a result of the Petitioner demonstrating the efficacy and safety of the technique, "patients will benefit from having less invasive arthroscopic surgery compared to traditional, 'open' surgery." However, the Petitioner has not demonstrated the impact or influence of his study on the field; he did not develop this technique but only studied its long-term patient outcomes. The record does not establish, for example, that the Petitioner or his research has been credited with the increased use of the arthroscopic [redacted] technique or it has already been widely adopted in the field. [redacted] observes that the Petitioner published his research in *The Journal of Shoulder and Elbow Research* and states that "only the most impactful and well-established research" is chosen for publication in scholarly journals. However, the record reflects that the Petitioner's 2017 article had been cited by others only one time at the time the petition was filed in 2020.

Overall, the letters recognize highly praise the Petitioner's abilities and discuss the prospective benefit of the Petitioner's work, but do not contain detailed information showing the unusual influence or high impact the Petitioner's contributions have already had on the overall field. The letters show that the Petitioner's original work has added value to the pool of knowledge in his highly specialized field and assisted in confirming the viability of newer advanced surgical techniques that may encourage their increased implementation. The evidence, however, is insufficient to confirm that the level of attention he has received reflects widespread commentary and acceptance of his work, or that the orthopedic field has regarded his research as authoritative. Letters that specifically articulate how a petitioner's contributions are of major significance to the field and its impact on subsequent work add value.² On the other hand, letters that lack specifics do not add the same value, and are not considered to be probative evidence that may form the basis for meeting this criterion.³

As noted, the Petitioner did not solely submit recommendation letters and we have considered the opinions alongside evidence of his publication history, citations to his work, and his participation in conferences and symposia in his field. Regarding his citations, the Petitioner provided a summary from *Google Scholar* demonstrating that his five published journal articles and one of his textbook chapters have been cited by others.⁴ Of these, two publications garnered five or fewer citations, three were cited between 31 and 37 times, and one publication, titled [redacted] published in *Nature Medicine* in 2009, was cited 243 times.

² See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8-9.

³ *Id.* at 9.

⁴ The record does not demonstrate that his other publications have generated citations.

It is the Petitioner's burden to identify his original contributions and explain why they are of major significance in the field. Generally, citations can serve as an indication that the field has taken interest in a petitioner's research or written work. Here, the Petitioner did not articulate the significance or relevance of the citations to his articles. Although his citations are indicative that his research has received some attention from the field, the Petitioner did not demonstrate that citation numbers to his individual articles represent majorly significant contributions in the field.⁵

On appeal, he emphasizes that his research has been cited "over 200 times," suggesting that this rate of citation alone is sufficient to satisfy this criterion. However, he has not submitted a comparative ranking to average citation rates for articles in his field in support of his claim that 200 or more citations is indicative of a published article's reception as a major contribution in the field. An appropriate analysis, for example, would be to compare the Petitioner's citations to other similarly, highly cited articles, as well as factoring in other corroborating evidence. Publications and presentations are not sufficient under 8 C.F.R. § 204.5(h)(3)(v) absent evidence that they were of "major significance."

The Petitioner also emphasized that some of his publications have appeared in highly ranked journals. A publication that bears a high ranking or impact factor is reflective of the publication's overall citation rate. It does not, however, demonstrate an individual author's influence or the impact of research on the field. While we acknowledge that prestigious status of *Nature Medicine*, the Petitioner has not demonstrated that publication of his article in this or any other specific journal establishes that the field considers his research to be an original contribution of major significance. Here, although the Petitioner provided evidence that his *Nature Medicine* article was cited 243 times since its publication in 2009, we note that this article is only mentioned in passing in one of the submitted recommendation letters. [redacted] an orthopedic surgeon and associate professor at the University [redacted] notes that this publication "has provided a basis for further scientific work" that may eventually lead to a medical cure for osteoarthritis, but this brief statement does not explain in sufficient detail how the publication has been received in the field as an original contribution of major significance or how it has remarkably impacted research in the 11 years since its publication.

The Petitioner also submitted samples of other articles that cited to his work, but we cannot determine that they distinguish his publications from the other articles cited by the same authors. Further, the articles do not show the significance of the Petitioner's research to the overall field beyond the authors who cited to his work.⁶ While the Petitioner provided evidence reflecting the originality of his work through co-authored publications reporting his research findings, he has not demonstrated that the overall field views his research and work as being majorly significant.

Likewise, the record contains evidence of the Petitioner's attendance and participation at international conferences but did not demonstrate how these activities resulted in contributions of major significance in the field. Like publications, conference presentations alone are not sufficient under 8 C.F.R. § 204.5(h)(3)(v) absent evidence that they involved original contributions of "major

⁵ See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8-9 (providing an example that peer-reviewed articles in scholarly journals that have provoked widespread commentary or received notice from others working in the field, or entries (particularly a goodly number) in a citation index which cite the individual's work as authoritative in the field, may be probative of the significance of the person's contributions to the field of endeavor).

⁶ *Id* at 8-9; see also *Visinscaia*, 4 F. Supp. 3d at 134-35 (upholding a finding that a ballroom dancer had not met this criterion because she did not corroborate her impact in the field as a whole).

significance.” Here, the Petitioner argues that the Director’s decision “ignores [his] role as a faculty member at the prestigious [redacted] course and presentations at other medical symposia.” In his letter, [redacted] confirms his participation in this 2016 international course attended by over one thousand shoulder surgeons. [redacted] notes that the Petitioner presented his work on the five-year results of reverse shoulder arthroplasty in patients [redacted] noting that attendees “learned how to avoid complications through [the Petitioner’s] work.” He also confirms that the Petitioner demonstrated “unique and advanced surgical technique including the arthroscopic [redacted] and knot-tying.” He does not explain, however, how the Petitioner’s contributions at the conference are recognized in the field as remarkably influential or impactful.

For the reasons discussed above, considered both individually and collectively, the Petitioner has not shown that he has made original contributions of major significance in the field.

Evidence that the individual 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 argues that he performs in critical role for [redacted] in his position as an orthopedic surgeon. As it relates to a leading role, the evidence must establish that a petitioner is or was a leader. A title, with appropriate matching duties, can help to establish if a role is or was, in fact, leading.⁷ 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.⁸

The Director observed that the Petitioner submitted two letters⁹ from [redacted]’s Vice Chairman, [redacted] and information regarding the organization. He acknowledged the valuable work the Petitioner performs for the institute. However, the Director determined that the evidence did not establish that the Petitioner has been responsible for [redacted]’s success or standing “to a degree consistent with the meaning of ‘leading or critical role.’”

On appeal, the Petitioner asserts that the Director overlooked or mischaracterized [redacted]’s statements and asserts that the evidence was sufficient to establish how his role is critical to [redacted] as a whole. The Petitioner highlights portions of [redacted]’s letter, emphasizing that his employer confirmed that he sets “the clinical standards for shoulder and elbow surgery for [the] organization,” oversees the institute’s “upper extremity clinical pathways,” and has “led and instituted multiple nationally funded research studies.” Finally, the Petitioner emphasizes the following statement from [redacted]

Without [the Petitioner’s] exceptional contributions, [redacted] would not have had such successes in these fields. We are considered a leader in the orthopedic surgery field because of [the Petitioner’s] work with us. Moreover, his expertise

⁷ See USCIS Policy Memorandum PM-602-0005.1, *supra*, at 10.

⁸ *Id.*

⁹ The initial evidence included a letter from 2017 which pre-dated the Petitioner’s employment with [redacted]. The second letter, dated March 2020, was submitted in response to the Director’s request for evidence.

continues to serve the community's best interests in providing top surgical and patient care as evidence by his great patient reviews and accolades.

The Petitioner submitted a screenshot from [redacted]'s website indicating that it has been "recognized as the number one orthopedic group five years and running by [redacted]" An article from 2015 mentions that [redacted] had 150 care providers and 26 facilities in two states at that time.

In his letter, [redacted] highlights the Petitioner's clinical leadership duties, noting that he "oversees a very busy and complex shoulder and elbow specialty practice" and "leads the Shoulder Service" for his clinical site." He also emphasizes that while most clinicians are not significantly engaged in research activities, the Petitioner "has demonstrated the ability to differentiate himself from his peers by remaining a leader in such efforts." [redacted] also notes that the Petitioner is a "critical contributor" to the [redacted] Research Group, where he "spearheads numerous important studies." In addition, he highlights that the Petitioner is a frequently invited lecturer and leads activities for surgeons in training, noting that he "clearly goes above and beyond the typical busy clinician."

While this letter establishes that the Petitioner is a valued contributor to [redacted]'s shoulder practice, the evidence does not establish that his role is leading based on his placement within the [redacted]'s hierarchy. Nor does the does the evidence demonstrate that the work he performs is critical to the outcome of the organization's activities as a whole. Although [redacted] implies that the Petitioner is unique within the organization based on the breadth of his clinical, research and lecturing activities, [redacted]'s website places considerable emphasis on the multi-faceted activities of its surgeons, noting that they are [redacted] speakers who continue to publish journal articles and book chapters," actively engaged in research, and involved in training other surgeons in "new surgical techniques." The Petitioner also submitted a screenshot from [redacted] [redacted]'s website describing its partnership with [redacted] which emphasizes that many "fellowship trained physicians at [redacted] routinely participate in clinical research trials and laboratory-based studies." Overall, many of the attributes and responsibilities that are claimed to distinguish the Petitioner from his colleagues appear to be typical expectations for the institute's specialty physicians and surgeons.

Finally, while we acknowledge that [redacted] attributes [redacted]'s standing and success in the orthopedic surgery field to the individual efforts of the Petitioner, the record reflects that the practice enjoyed a top ranking in [redacted] and national recognition in the years prior to his recruitment. As [redacted] did not elaborate, we cannot determine whether the Petitioner's position as an orthopedic surgeon has impacted the outcome of the organization's overall activities in a manner that satisfies the "critical role" element of the criterion at 8 C.F.R. § 204.5(h)(3)(viii).

B. O-1 Classification

We note that the record reflects that the Petitioner has been granted O-1 status, a classification reserved for nonimmigrants of extraordinary ability. Although USCIS has approved at least one O-1 nonimmigrant visa petition filed on behalf of the Petitioner, the prior approval does not preclude USCIS from denying an immigrant visa petition which is adjudicated based on a different standard –

statute, regulations, and case law. Many Form I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d Cir. 1990).

Further, it must be emphasized that each petition filing is a separate proceeding with a separate record. In making a determination of statutory eligibility, USCIS is limited to the information contained in that individual record of proceedings. 8 C.F.R. § 103.2(b)(16)(ii). We are not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 597 (Comm'r 1988); *see also Sussex Eng'g, Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987).

Finally, our authority over the USCIS service centers, the office adjudicating the nonimmigrant visa petition, is comparable to the relationship between a court of appeals and a district court. Even if a service center director has approved a nonimmigrant petition on behalf of an individual, we are not bound to follow that finding in the adjudication of another petition. *See La. Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, at *2 (E.D. La. 2000).

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 his 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 he 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).

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