



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

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

In Re: 5939080

Date: JUNE 15, 2020

Appeal of Nebraska Service Center Decision

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

The Petitioner, a law firm, seeks to classify the Beneficiary 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 the Petitioner established that the Beneficiary had satisfied only two 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)(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 a

beneficiary's 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, a law firm, employs the Beneficiary as its instructional coordinator, developing several continuing legal education courses. The Beneficiary indicates previous employment between 2014 and 2017 as an assistant professor [redacted] Department at [redacted] University in [redacted] Saudi Arabia. In 2011 he was awarded a humanities doctorate in literature from the University of [redacted]. Because the Petitioner has not indicated or established that the Beneficiary has received a major, internationally recognized award, it must establish that he satisfies 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). Although we agree with the Director that the Beneficiary authored scholarly articles in professional publications, we do not concur with the Director's finding relating to the judging criterion, discussed later.

On appeal, the Petitioner does not specifically address the regulatory criteria. In two accompanying letters, however, the Petitioner references the Beneficiary's achievements for his firm and evidence relating to four additional criteria. After reviewing all the evidence in the record, we conclude that the Petitioner has not established that the Beneficiary satisfies the requirements of at least three criteria.

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. 8 C.F.R. § 204.5(h)(3)(i).

In order to fulfill this criterion, the Petitioner must demonstrate the Beneficiary's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.¹ The Petitioner submitted several certificates that acknowledged and thanked the Beneficiary for his participation, contribution, and dedication to service. For instance, the Petitioner submitted several appreciation certificates from the UN International Strategy for Disaster Reduction that recognized the Beneficiary for his contributions as an online volunteer in "English to Arabic translation of disaster recovery training material" in 2012 and 2016, and a certificate from the Plan EU Office that recognized

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 6* (Dec. 22, 2010), <https://www.uscis.gov/policymanual/HTML/PolicyManual.html>.

his “translation of the Plan EU Youth Poll on Girls’ Rights (15 questions in total) from English to Arabic” in 2012.

In addition, the Petitioner provided a “Certificate of Commendation” from *The Education Charter Magazine*, that recognized the Beneficiary’s “outstanding contribution to Journalism and writing” for his having “submitted [an] article for the [redacted] edition of *The Education Charter* through the United Nations Volunteering Program” in 2012, and a “Certificate of Appreciation” from the Chamber of Computer Logistics People Worldwide for his having written “articles for international educational magazine” in 2016. The Petitioner further provided a letter of appreciation from the National Council of Teachers of English for the Beneficiary’s volunteer work in participating in “the Banned Books Week chat” in 2014.

However, as this criterion requires the Petitioner to submit documentation of the Beneficiary’s “nationally or internationally recognized *prizes or awards* for excellence [emphasis added],” we are not persuaded that documentation that merely acknowledges or recognizes the Beneficiary’s participation, as well as certificates that thank the Beneficiary for contributing articles to magazines in the field of education, equates to a prize or award consistent with the requirements of this criterion. Further, the Petitioner did not submit any documentary evidence reflecting that they are nationally or internationally recognized for excellence in the field of endeavor.

Finally, we acknowledge that the Petitioner provided a certificate indicating that in 2013 the academic board of the International Council of CCLP Worldwide “selected” the Beneficiary as a “Fellow Chartered Educator” based upon “his contribution in the field of Education and Research.” The record does not contain any additional information regarding the basis for granting this distinction, and therefore did not establish that it is considered to be a nationally or internationally recognized award for excellence in his field.

For these reasons, the Petitioner did not demonstrate that the Beneficiary satisfies 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).

In order to satisfy this criterion, the Petitioner must demonstrate published material about the Beneficiary relating to his work in professional or major trade publications or other major media, as well as the title, date, and author of the material.² Articles that are not about an alien do not fulfill this regulatory criterion. *See, e.g., Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at *1, *7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles regarding a show are not about the actor). The Petitioner submits several articles that cite to the Beneficiary’s work. The Director determined that the Petitioner did not meet the requirements of this criterion, and we agree with that determination.

A review of the citing articles reveals that the Beneficiary is not a primary topic within the text. Instead, the references to his cited work in the articles’ bibliographies are among dozens of cited texts

² *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 7.

for the articles. Such a reference in a bibliography does not establish the articles are about the Beneficiary relating to his work in the field. Instead, articles which cite the Beneficiary's work are primarily about the authors' own work in the field. They are not about the Beneficiary or even about his work. A reference to a beneficiary's work without evaluation does not meet the plain language requirements set forth in this criterion. The submitted documentation does not discuss the merits of the Beneficiary's work, his standing in the field, any significant impact that his work has had on the field, or any other information so as to be considered published material about the Beneficiary as required by this criterion. The research articles citing to the Beneficiary's work are more relevant to the original contributions criterion at 8 C.F.R. § 204.5(h)(3)(v) and will be addressed there.

For these reasons, the Petitioner did not demonstrate that the Beneficiary fulfills this criterion.

Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought. 8 C.F.R. § 204.5(h)(3)(iv).

As discussed earlier, the Director found that the Petitioner satisfied this criterion. This regulatory criterion requires the Petitioner to show that the Beneficiary has acted as a judge of the work of others in the same or an allied field of specialization.³ For the reasons outlined below, the record does not reflect that the Petitioner submitted sufficient documentary evidence demonstrating that the Beneficiary meets this criterion, and the Director's determination on this issue will be withdrawn.

The record reflects that the Petitioner claimed eligibility for this criterion based on the Beneficiary's review of papers for the journal *Interdisciplinary Literary Studies* and for the [REDACTED] [REDACTED] 2015 and 2016 ([REDACTED]), organized by the International Academic Forum (IAFOR). The Petitioner provided two emails dated April 2015 from [REDACTED] [REDACTED] of *Interdisciplinary Literary Studies*, inviting the Beneficiary to review the manuscript, [REDACTED]' thanking the Beneficiary for agreeing to review the manuscript, and informing him "I would appreciate receiving your review by June 8, 2015." The Petitioner also provided two emails dated, respectively, December 2014 and December 2015 from IAFOR Peer Review regarding "[REDACTED] Conference Inquiries" and "[REDACTED] Conference Inquiries," requesting that the Beneficiary "review a minimum of three abstracts," and advising him that "[t]here are currently [abstracts] ready for you to review."

In order to meet this criterion, a petitioner must show that the beneficiary has not only been invited to judge the work of others, but also that he actually participated in the judging of the work of others in the same or allied field of specialization.⁴ Here, the emails do not demonstrate that the Beneficiary actually completed the paper reviews for *Interdisciplinary Literary Studies*, [REDACTED] or [REDACTED] [REDACTED].⁵ Instead, as indicated above, the emails reflect a request to participate in the peer review process and to conduct the abstract review for *Interdisciplinary Literary Studies* by the stated deadline. Moreover, the Petitioner did not present any supporting evidence establishing that the Beneficiary, in

³ See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8.

⁴ *Id.*

⁵ *Id.* (providing an example of peer reviewing for a scholarly journal, as evidenced by a request from the journal to the alien to do the review, accompanied by proof that the alien actually completed the review).

fact, performed the paper reviews. For example, the Petitioner did not provide evidence from *Interdisciplinary Literary Studies* confirming that the Beneficiary accomplished the manuscript review request, or corroborating documentation from the [] conferences showing how many and which papers the Beneficiary reviewed.⁶

For the reasons discussed above, the Petitioner did not establish that the Beneficiary participated as a judge of the work of others consistent with this regulatory criterion. Accordingly, we withdraw the decision of the Director for 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).

In order to satisfy the regulation at 8 C.F.R. § 204.5(h)(3)(v), a petitioner must establish that not only has a beneficiary made original contributions but that they have been of major significance in the field.⁷ For example, a petitioner may show that the beneficiary's 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 submitted articles that have cited to the Beneficiary's published work in the field, evidence that the Beneficiary has presented his work at professional symposia, and several recommendation letters from colleagues.

The record contains evidence of the Beneficiary's participation and presentation in symposia in the field of education, such as [] in [] Japan. However, the Petitioner did not establish, for instance, the significance of the Beneficiary's presentations, if the field views them as authoritative, or whether they have been extensively referenced or cited by others. Publications and presentations are not sufficient to establish eligibility under this criterion absent evidence that they were of "major significance." *See Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009), *aff'd in part*, 596 F.3d 1115. Here, the Petitioner has not established that a presentation at a conference alone demonstrates a contribution of major significance in the field.

In addition, as discussed previously, the Petitioner submitted articles that cited to the Beneficiary's work. A review of those articles, though, does not show the significance of the Beneficiary's research to the overall field beyond the authors who cited to his work.⁸ For instance, the Petitioner provided an article titled "[] (*International Journal on Quranic Research*), in which the author cited to the Beneficiary's article [] (*The Journal of Inter-Religious Dialogue*).⁹ However, the

⁶ The Petitioner also provided an email dated April 2018 from [] regarding [] [] requesting that the Beneficiary "review a minimum of three abstracts." However, the Petitioner filed this petition in March 2017. The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1). Therefore, the Petitioner cannot establish the Beneficiary's eligibility under this criterion based on his participation in judging in 2018, even if we were to determine that it otherwise satisfies all elements of this evidentiary criterion.

⁷ *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8-9 (stating that although funded and published work may be "original," this fact alone is not sufficient to establish that the work is of major significance).

⁸ *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8-9; *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 134-135 (D.D.C. 2013) (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).

⁹ Although we discuss a sample article, we have reviewed and considered each one.

article does not distinguish or highlight the Beneficiary's written work from the 36 other cited texts used for the article. In the case here, the Petitioner has not shown that the Beneficiary's published articles through citations rise to a level of "major significance" consistent with this regulatory criterion.

Moreover, regarding his testimonials, the authors praise the Beneficiary for his research abilities and work ethic; however, they do not show how his research constituted an original contribution of major significance in the field. For instance, the Petitioner provided recommendation letters from several of the Beneficiary's colleagues at [redacted] [redacted] states that the Beneficiary is a researcher who "is willing to go above and beyond limitations and expectations." [redacted] [redacted] a member of the Beneficiary's dissertation committee, describes him as "extremely hard working" with "good judgment, research and analytical abilities" and possessing "unique insights in the area of the American Literary tradition." [redacted] who supervised the Beneficiary's dissertation, calls him "a very good scholar" and "a hard worker." [redacted] [redacted] one of the editors of his dissertation, asserts that during the Beneficiary's years of teaching he "helped develop curricula in the fields of both linguistics, American literature, and education." In addition, [redacted] the Beneficiary's neighbor, praises the Beneficiary's "very inquiring and open mind." The aforementioned authors did not provide specific, detailed information explaining the significance of the Beneficiary's research, publications, and presentations or how they resulted in contributions of major significance in the field.

On appeal, the Petitioner provides several additional reference letters from the Beneficiary's colleagues at the [redacted] University. [redacted] confirms that the Beneficiary headed the department between 2015 to 2017 and praises his competence in his specialization of [redacted] literature. [redacted] asserts that the Beneficiary "has published several research papers on the general areas of Culture Studies and Critical Theories and through which his contribution to the academic department is unmatched." [redacted] [redacted] describes the Beneficiary as "an able administrator" of the [redacted] Department, who developed a graduate research course and a new academic plan for the Bachelor of [redacted] degree program. [redacted] praises the Beneficiary's "articulate passion for teaching, scholarly pursuit of independent research and exemplary administrative acumen," and provides that the Beneficiary was involved in "curriculum revision and evaluation reforms." [redacted] [redacted] states that the Beneficiary is "a passionate and committed scholar, administrator, and academic." [redacted] praises the Beneficiary's "analytical and artistic skills" in the fine arts and humanities. Upon review, the letters from the Beneficiary's colleagues in the [redacted] University praise his contributions to the department in the areas of curriculum development, academic rigor, and teaching excellence, but they did not show how the Beneficiary's knowledge and expertise have significantly influenced the overall field in a major way.

While the letters applaud the Beneficiary's abilities, they do not identify original contributions that have been of major significance. Letters that specifically articulate how a beneficiary's contributions are of major significance to the field and its impact on subsequent work add value.¹⁰ On the other hand, letters that lack specifics and use hyperbolic language do not add value, and are not considered

¹⁰ See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8-9.

to be probative evidence that may form the basis for meeting this criterion.¹¹ Moreover, USCIS need not accept primarily conclusory statements. *1756, Inc. v. The U.S. Att’y Gen.*, 745 F. Supp. 9, 15 (D.C. Dist. 1990).

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

III. CONCLUSION

We find that although the Petitioner has established that the Beneficiary satisfies the scholarly articles criterion, he does not meet any additional criteria on appeal regarding awards, published material, judging, and original contributions of major significance. While the Petitioner argues and submits evidence that the Beneficiary satisfies the requirements for one additional criterion on appeal, relating to leading or critical role for distinguished organizations at C.F.R. § 204.5(h)(3)(viii), we need not reach this additional ground. As the Petitioner cannot fulfill the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3), we reserve this issue.¹² Accordingly, 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 Beneficiary’s acclaim and recognition required for the classification sought.

The Petitioner seeks a highly restrictive visa classification for the Beneficiary, 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 the Beneficiary’s 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 Beneficiary 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). Although the Beneficiary has conducted research and authored scholarly articles, the record does not contain sufficient evidence establishing that he is among the upper echelon in his field.

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.

¹¹ *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 9. *See also Kazarian*, 580 F.3d at 1036, *aff’d* in part 596 F.3d at 1115 (holding that letters that repeat the regulatory language but do not explain how an individual’s contributions have already influenced the field are insufficient to establish original contributions of major significance in the field).

¹² *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach).