



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

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

In Re: 8325115

Date: MAY 27, 2020

Appeal of Nebraska Service Center Decision

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

The Petitioner, an assistant professor of computer science and information systems, 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 the Petitioner had satisfied only two of the ten initial evidentiary criteria for this classification, of which she must meet at least three. The matter is now before us on appeal.

The petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). The Administrative Appeals Office (AAO) reviews the questions in this matter *de novo*. *See 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

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).

II. ANALYSIS

The Petitioner is an assistant professor of computer science and information systems at [redacted] University [redacted]. She earned her master’s degree in computer engineering at [redacted] University in 2010 and her doctor of philosophy in computer engineering at University of [redacted] in 2015. Previously, she worked as a research assistant and adjunct faculty at University of [redacted] and as fixed-term faculty at [redacted] University from 2015 to 2016.

A. Evidentiary Criteria

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). The Petitioner claims to meet four of these ten criteria, summarized below:

- (ii), Membership in associations which require outstanding achievements;
- (iv), Participation as a judge of the work of others;
- (v), Original contributions of major significance; and
- (vi), Authorship of scholarly articles.

The Director concluded that the Petitioner met the criteria pertaining to judging and scholarly articles. The record supports this determination. Specifically, the Petitioner has provided evidence confirming that she reviewed manuscripts submitted by her peers for publication to the *International Journal of Distributed Sensor Networks* and the 2017 *International Conference on Computing, Networking and Communications* (ICNC). In addition, evidence confirms that she has authored scholarly articles that were published in conference proceedings including the *International Conference on Computer Communications and Networks* (ICCCN), *IEEE Conference on Local Computer Networks* (LCN), and *Network Operations and Management Symposium* (NOMS).

On appeal, the Petitioner maintains that she also meets the two other claimed criteria, which we will discuss below. We have reviewed all the evidence in the record and conclude that it does not show that the Petitioner satisfies the requirements of at least three criteria.

Documentation of the individual'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 that she satisfies this criterion based on her membership in the Institute of Electrical and Electronics Engineers (IEEE). 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.¹

The Petitioner provided a copy of her IEEE membership card and a printout of a page from IEEE's website ("How do I become an IEEE Member?") identifying two membership types – "professional" and "student/graduate student." According to this document, "professional membership" is "[f]or individuals who are contributing or working in a technology or engineering field." The Petitioner argued that this requirement demonstrates that applicants for membership are judged before being granted admission. The Director determined that the submitted information did not discuss the IEEE's membership requirements or the requirements for those who judge applications and therefore determined that the evidence did not establish that the Petitioner met this criterion.

On appeal, the Petitioner submits a second printout from IEEE's website and asserts that it "clearly demonstrates that to become a member of IEEE you need to have continued education, years of experience, demonstrated contributions to the field, and have been published." The attached printout, which is titled "Qualifications for IEEE Membership," does not support this statement. It states that applicants must have "satisfied IEEE-specified educational requirements" and/or "have demonstrated professional competence in IEEE-designated fields of interest" in order to be admitted as members. Specifically, individuals may qualify by: (1) receiving a three- to five-year university level or higher degree in an IEEE-designated field; (2) receiving any three- to five-year university level or higher degree and at least three years of professional work experienced in an IEEE-designated field; or (3) by having six years of professional work experience in which they demonstrated competence in an IEEE-designated field. Based on this evidence, standard membership in the IEEE is based on an individual attaining a certain level of education and/or years of experience in designated fields and is not based on outstanding achievements in the field.²

The additional IEEE membership requirements mentioned in the appellate brief, such as those related to demonstrated contributions, appear to be those that apply to IEEE's "senior member grade." As the Petitioner has not established that she is a senior member of the IEEE, we will not evaluate whether that membership grade would qualify under this criterion. The Petitioner has not established that she satisfies this criterion based on her membership in the IEEE.

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>. (providing an example of admission to membership in the National Academy of Sciences as a Foreign Associate, which requires individuals to be nominated by an academy member, and membership is ultimately granted based upon recognition of the individual's distinguished achievements in original research).

² *Id.* at 7.

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)

In order to satisfy this criterion, petitioners must establish that not only have they made original contributions, but also that those contributions have been of major significance in the field. 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. The phrase “major significance” is not superfluous and, thus, it has some meaning. *See Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F.3d 28, 31 (3rd Cir. 1995) quoted in *APWU v. Potter*, 343 F.3d 619, 626 (2nd Cir. Sep 15, 2003).

The Petitioner explained that her research projects [redacted] [redacted] [redacted].” The Petitioner submitted several reference letters from mentors, colleagues, and others in support of her claim that she has made original contributions of major significance based on her research. The Director determined that the submitted letters supported the Petitioner’s claims regarding her original research but did not demonstrate that her contributions had already substantially impacted the field of endeavor.

On appeal, the Petitioner objects and argues that the Director did not give sufficient weight to a detailed expert letter from [redacted] who explained how her research has “already begun to contribute to the field” and “furthered the science involving networks and big data transfers.” We agree that the opinions of experts in the field are relevant to this criterion and we have considered them below. However, the letters submitted, including [redacted]s, do not offer sufficiently detailed information, nor does the record include adequate corroborating documentation, to demonstrate that the Petitioner has made specific original contributions that are recognized in the field as majorly significant.

The record reflects that the Petitioner provided two letters from [redacted] an associate professor at the [redacted] Institute of Technology who was her Ph.D. advisor at the University of [redacted]. We have reviewed and considered both letters but will focus on the more detailed statement submitted in response to the Director’s request for evidence. [redacted] devotes a substantial portion of his letter to explaining the area in which the Petitioner conducts her research. Specifically, he provides background information regarding “Big Data” and the associated demand for bandwidth, risks and threats facing enterprise networks, the appeal of Bandwidth on Demand (BoD) as a cost-effective solution for temporary large bandwidth needs, and the possibilities offered by [redacted] [redacted], which he describes as “still in the experimental phase.” He explains that [redacted] has received considerable attention from the networking industry, and, if successful, could revolutionize networking and make networks “more secure, affordable and flexible.” [redacted] noted that companies including Google and Microsoft “are all working on designing models to make [redacted] a reality.”

Turning to the Petitioner’s work, [redacted] explains that her research “focuses on designing [redacted] [redacted] techniques to support faster transfer of big-data with the main objective of efficient utilization of network resources” and “utilizes [redacted] infrastructure that enables network administrators to make better routing decisions which is a critical requirement for efficient working of BoD applications.” [redacted] explains that the Petitioner has “proposed and published various efficient

[redacted] considering many real-time constraints such as delay, deadline, bandwidth, etc.” and has published her work at “top-tier networking conferences.” While he describes the Petitioner’s research and the issues addressed through that research in technical detail, and indicates that the work is considered original and has generated some interest from others in the field as evidenced by invitations to present it at conferences, we agree with the Director’s determination that his letter does not demonstrate how the Petitioner’s work has already impacted the field. Rather, [redacted] refers in general terms to the promise and potential of the research and how it might be of future benefit.

For example, he states that “Big-data transfer and multimedia applications such as Netflix can hugely benefit from [the Petitioner’s] proposed solutions that ensure improved [redacted]” indicates that her work “has a great potential to achieve [redacted] in real-time networks” and maintains that “it will also play a major role in understanding the challenges involved in implementing [redacted]” He further states that “[w]ith companies like Google, Amazon, Facebook and Microsoft proposing models to introduce [redacted] [the Petitioner’s] work will help to explore various challenges involved which is very much critical at this initial phase of [redacted]” While [redacted]’s letter explains that the Petitioner is a productive researcher in an active field of research, and has made contributions to that field’s growing body of knowledge, the record does not objectively establish that the Petitioner’s efforts to date have been recognized for their major significance, or establish how other researchers, or the major companies referenced above, have already benefited from her contributions.

[redacted] also states that the Petitioner “has made significant contributions in designing [redacted] [redacted] which are extremely important to Department of Energy, National science laboratories, organizations targeted by network-based attacks, and United States as a whole.” He does not further elaborate or state whether her algorithms are already by used by the Department of Energy, national science laboratories, or other organizations. Without additional detail, we cannot conclude that these algorithms have been widely adopted by or have remarkably impacted the field, or whether [redacted] believes that they will ultimately benefit the named entities and “the United States as a whole” in the future.

Although the Petitioner and Director both focus on [redacted]’s letter, we have reviewed and considered the other submitted expert opinion letters and find them similarly lacking in detail regarding the current impact or influence of the Petitioner’s research in her field.³ [redacted] of [redacted] University describes the Petitioner’s primary research focus and states that she “has made outstanding original contributions to the field of computer science” without further elaborating on what those contributions are or how they have been recognized as majorly significant in the field. [redacted] [redacted] chief technical officer at [redacted] and professor at [redacted] University, discusses the Petitioner’s work on using SDN for implementing [redacted], noting that “her innovative research using a [redacted] technique, has a great potential in real networks to route users in [redacted]”

³ In addition to the letters discussed, the Petitioner provided a letter from [redacted] of [redacted] in support of this criterion. [redacted] indicates that he reviewed the evidentiary criteria for this classification, and, in his opinion, the Petitioner meets the criteria related to awards, memberships in professional associations, judging, and authorship of scholarly articles. However, he does not address the original contributions criterion at 8 C.F.R. § 204.5(h)(3)(v), or otherwise comment on the significance of her research contributions and their impact in the field.

Finally, [redacted], a professor at the University of [redacted] states that the Petitioner's research "has a potential in handling massive network-based attacks . . . caused by lack of bandwidth," that it "has a significant role in designing and implementing the next generation networks that the entire networking industry is trying to standardize," and "will play a major role in Internet, especially for users who have huge files to transfer or want to watch high-quality videos and pay only for the period of usage." Like the other expert letters, [redacted]'s focuses on the *potential* significance of the Petitioner's original research, which is not sufficient to meet the requirements of this criterion.

Based on our review of the letters, we agree with the Director that, while they are not without weight, they are insufficient to establish that the Petitioner meets every element of this criterion. The letters considered above primarily contain attestations of the novelty and utility of the Petitioner's research studies without providing specific examples of contributions that rise to a level consistent with major significance. Letters that specifically articulate how a petitioner's contributions are of major significance to the field and its impact on subsequent work add value. Letters that lack specifics do not add value are not considered to be probative evidence that may form the basis for meeting this criterion.⁴ 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). The authors' assertions in the above-referenced letters do not explain how the Petitioner's research findings have been widely implemented or relied upon by others in the field or establish that the Petitioner's work has had a demonstrable impact in the field commensurate with a contribution of major significance. Letters of this kind can help to explain the nature of the Petitioner's contributions but should be supported with corroborating documentary evidence to establish the major significance of those contributions.

The Petitioner also submits her publication and citation record from *Google Scholar* and provides evidence that she has been invited to present her papers at international conferences. But this evidence not show that the impact of her work in the computer science and networking field rises to the level of an original contribution of major significance. Generally, citations can serve as an indication that the field has taken interest in a petitioner's work; however, the fact that the Beneficiary has published articles that other researchers have referenced, is not, by itself, indicative of a contribution of major significance. Journal and conference publications are not sufficient under 8 C.F.R. § 204.5(h)(3)(v) absent evidence that they were of "major significance." We acknowledge, however, that a petitioner may present evidence that his articles "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 [her] work as authoritative in the field, may be probative of the significance of [her] contributions to the field of endeavor."⁵

Here, the Petitioner states that her record of five publications and 23 citations provides "direct evidence that her original scientific/scholarly work is a contribution in her field," and there is "no doubt that her research has furthered the science involving networks and big data transfers." The Petitioner does not provide comparative evidence to show that any of her published articles is highly cited by others in the field, which may be one indicator of its impact. Nor has the Petitioner demonstrated that her work has been cited as authoritative in the field or has otherwise received notice from others in the field at a level consistent with "contributions of major significance in the field." While it is likely that the

⁴ See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8-9.

⁵ *Id.* at 8.

Petitioner's published research has incrementally advanced the science in her field, which is reasonably expected of research deemed worthy of publication, her publication record does not establish how she has generated widespread commentary or acceptance and application of her findings, nor does the evidence establish that her published studies have advanced the field in a significant way. While the Petitioner submitted corroborating evidence in the form of expert opinion letters, that evidence, for the reasons already discussed, is not sufficient to establish that any of the Petitioner's research findings, individually or collectively, have remarkably impacted or influenced her field.

Finally, the Director's decision reflects that he considered the evidence of the Petitioner's research awards and grants, travel awards, teaching awards, and other documentation that she initially submitted as "comparable evidence" under 8 C.F.R. § 204.5(h)(4) to determine whether such evidence is relevant to this criterion.⁶ The Director determined that this evidence did not demonstrate that she was recognized by the field for her original contributions of major significance and the Petitioner does not contest this conclusion on appeal. We agree with the Director's conclusion. While such evidence indicates that she has received positive recognition in her field, as both a teacher and researcher, it does not support a finding that she meets this criterion. Regardless, receiving funding to conduct research, without more, is not indicative of a contribution of major significance in the field. Rather, the Petitioner must establish that receiving grants or other similar funding or awards reflects her past works' major significance, or that her research conducted with the funding resulted in contributions of major significance in the field. She has not made such a showing.

Accordingly, based on the evidence in the record, the Petitioner has not shown, by a preponderance of the evidence, that she has made original contributions of major significance in the field.

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

⁶ The regulation at 8 C.F.R. § 204.5(h)(4) allows a petitioner to submit comparable material if he or she is able to demonstrate that the standards at 8 C.F.R. § 204.5(h)(3)(i)-(x) do not readily apply to the individual's occupation. The Petitioner here submitted "comparable evidence" but did not claim that the criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x) do not readily apply to her occupation. As noted, she claims that she meets four of those criteria.

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).

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.