



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

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

In Re: 8095932

Date: MAY 29, 2020

Appeal of Nebraska Service Center Decision

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

The Petitioner, an assistant professor of anesthesiology, 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 one of the initial evidentiary criteria, of which he must meet at least three.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 203(b)(1)(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 indicated employment as an assistant professor of anesthesiology at [redacted] College in [redacted] New York, with duties including education, research, and patient care. The record shows that [redacted] College is a subsidiary of [redacted] Medical Center [redacted] an academic health sciences center that includes [redacted] Medical Center Hospital. 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).

In denying the petition, the Director determined that the Petitioner fulfilled one of the initial evidentiary criteria, judging at 8 C.F.R. § 204.5(h)(3)(iv). The record reflects that the Petitioner reviewed papers for journals. Accordingly, we agree with the Director that the Petitioner fulfilled the judging criterion.

On appeal, the Petitioner asserts that he meets four additional criteria, relating to published materials in major media, original business contributions of major significance, scholarly articles, and leading or critical role for distinguished organizations or establishments, 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.

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).

On appeal for the first time, the Petitioner contends that he satisfies this criterion based on an article titled [redacted] published in the newspaper *Albany Times Union*. In order to satisfy this criterion, the Petitioner must demonstrate published material about him in professional or major trade publications or other major media, as well as the title, date, and author of the material.¹

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

The aforementioned article indicates that the Petitioner's medical device company, [REDACTED] was one of four startup companies that received awards in cash and services in a competition sponsored by the [REDACTED] at [REDACTED] Med. Although, in discussing each startup, the article mentions that the Petitioner and his co-inventor developed technology intended to prevent complications from [REDACTED] caused by surgery, the article is not about the Petitioner. 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).

In addition, the Petitioner did not establish that *Albany Times Union* is a professional or major trade publication or other major medium. The Petitioner cites to information on the company's website that "[t]he *Times Union* is the leading news organization in New York's Capital Region." He also provides data from an *Albany Business Review* article posted on www.bizjournals.com that the average paid weekday circulation of *Albany Times Union* is 43,807. Here, the Petitioner did not show the significance of the circulation figure or how such data reflects status as a major medium.²

For these reasons, the Petitioner did not demonstrate that he fulfills 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).

The Petitioner maintains that he has made several original contributions of major significance in his field as evidenced by citation to his work, publication in top ranked journals, testimonial letters, and patent applications. 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.³ 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 in the field.

Regarding his citations, in response to the Director's request for evidence the Petitioner provided evidence from *Google Scholar* reflecting 17 cumulative citations. Specifically, the record shows that his four cited articles received 11 (*Journal of Cardiothoracic and Vascular Anesthesia*), 4 (*Journal of Clinical Anesthesia*), 1 (*Journal of Cardiac Surgery*), and 1 (*Anesthesia and Analgesia*), citations, respectively.⁴ This criterion requires the Petitioner to establish that he has made original contributions of major significance in the field. Thus, the burden is on the Petitioner 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. However, the Petitioner has not sufficiently shown that his citations for any of his published articles are commensurate with contributions of major significance. Here, the Petitioner did not articulate the

² *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 7 (indicating that evidence of published material in professional or major trade publications or in other major media publications should establish that the circulation (on-line or in print) is high compared to other circulation statistics).

³ *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8-9 (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).

⁴ The Petitioner's remaining 7 articles garnered no citations.

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 his citation numbers to his individual articles represent majorly significant contributions in the field.⁵

Likewise, the record contains evidence of his attendance and participation at national conferences but did not demonstrate how they resulted in contributions of major significance in the field. Publications and presentations are not sufficient under 8 C.F.R. § 204.5(h)(3)(v) 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 at 1115. Here, the Petitioner has not established that a presentation at a conference alone demonstrates a contribution of major significance in the field.

Further, the Petitioner submitted evidence that he is the lead inventor on a provisional patent application for a [redacted] device and on a utility patent application for an [redacted] device, filed in 2018 and 2019, respectively. He also provided a letter from the attorney who filed the patent application on the [redacted] device, opining that the device “is a novel invention, with little or no indication that others had even conceived of the possibility of the invention.” There is no guarantee, however, that the Petitioner’s patent applications will result in the patents actually being awarded. Moreover, a patent primarily recognizes the originality of the idea, but it does not demonstrate that the Petitioner made a contribution of major significance in the field. The Petitioner also indicates that his [redacted] award related to the [redacted] device constitutes a contribution of major significance in the field. The regulation at 8 C.F.R § 204.5(h)(3)(i) is a separate criterion pertaining to awards. While some awards might also be relevant to whether the Petitioner has made original contributions of major significance, the Petitioner must demonstrate the relevance of his recognition at competitions to this criterion. The record does not contain evidence to establish this relevance, such as evidence that the [redacted] award recognizes biomedical technologies that have influenced the field as opposed to recognizing promising biotech startups.

Finally, the Petitioner presented about 18 recommendation letters that praised him for his professional achievements but do not demonstrate their major significance in the field. In general, the letters recount the Petitioner’s research and findings, indicate their publications in journals, and point to the citation of his work by others. Although they reflect the novelty of his work, they do not show how his research and findings have been considered of such importance and how their impact on the field rises to the level required by this criterion.

For instance, [redacted] asserts that the Petitioner’s research published in his 2015 *Anesthesia & Analgesia* article, titled [redacted] [redacted] “can assist in identifying this [redacted] complication during [redacted] interventions.” He characterizes the Petitioner’s 2017 *Journal of Cardiothoracic and Vascular Anesthesia* article, titled [redacted] [redacted], as having “contributed to the evolution of safe and effective anesthesia practice” by having demonstrated

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).

that [redacted] alone provides benefits of decreased ICU stay and decreased cost with no differences in 30-day mortality.⁶ [redacted] opines that the Petitioner's conference presentation on [redacted] [redacted] was "helpful for many practitioners in this field to offer superior patient care." Although those letters demonstrate that the Petitioner's work may have resulted in incremental advancements in the field, such as are expected in any original research, they do not indicate how it qualifies as contributions of major significance in the field.

[redacted] characterizes the Petitioner's highest cited 2017 article in the *Journal of Cardiothoracic and Vascular Anesthesia* as "one of the landmark articles for patients undergoing [redacted] valve replacement." However, [redacted] did not elaborate as to why the Petitioner's 2017 research was considered a "landmark" article, to show that the field considers it to be a contribution of major significance. He states that the Petitioner's fourth-highest cited 2015 article in *Anesthesia & Analgesia* provided doctors with "an additional easier way to identify this type of complication" and that he has "incorporated these findings into my practice." Similarly, [redacted] the Petitioner's colleague from medical school and [redacted] Hospital in [redacted], India, and [redacted] [redacted] of the *Journal of Cardiothoracic and Vascular Anesthesia*, assert that they follow the Petitioner's triage method for [redacted] patients set forth in his 2017 article in that journal. They do not explain, however, how their practice has been impacted or discuss whether the Petitioner's findings have been utilized by other practitioners or researchers in the same field, and if so, the extent of their application.

We further note that the letters of [redacted], [redacted], [redacted], and [redacted] contain multiple identical statements which suggest that their language was not written independently. While we acknowledge that the authors have provided their support for this petition, it is unclear whether the letters reflect their independent observations and thus an informed and unbiased opinion of the Petitioner's work. In evaluating the evidence, the truth is to be determined not by the quantity of evidence alone but by its quality. See *Matter of Chawathe*, 25 I&N Dec. at 376.

[redacted] whose states his research team cited to the Petitioner's 2017 *Journal of Cardiothoracic and Vascular Anesthesia* article in support of the "hypothesis that [redacted] sedation is a safe mode of anesthesia in selected [redacted] patients," asserts that the Petitioner's findings "contributed significantly to the observational literature" on that topic. [redacted] did not explain how the Petitioner's research has influenced the overall field rather than referencing his research in an editorial examining sedation versus general anesthesia in [redacted]. The Petitioner has not established that references to his research in that editorial or other articles are indicative of his work's significant impact in the field. Rather, these publications acknowledge that his studies have added to the general pool of knowledge, which, without evidence of significant influence in the field, is insufficient to satisfy this criterion.

Further, some of the testimonials detail the benefits patients received from the Petitioner's skills in individual cases. For example, [redacted] relates details of the Petitioner's placement of a breathing tube in a case in which he claims that the Petitioner's "ability to act flawlessly" saved lives as an anesthesia resident. [redacted] provides that the Petitioner "was

⁶ While we discuss a sampling of letters, we have reviewed and considered each one.

instrumental in saving the patient's life" in placing a spinal drain and assisting in resuscitation. 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).

Other testimonial letters speculated on the potential influence and on the possibility of being majorly significant at some point in the future. For instance, [redacted], [redacted], [redacted] [redacted] and [redacted] assert that the Petitioner's work on a [redacted] airway device with a built-in endotracheal tube "has the potential to eliminate routine laryngoscopy for endotracheal intubation in many procedures performed under general anesthesia." While the letters may show promise in the Petitioner's method, they do not establish how his method already qualifies as a contribution of major significance in the field, rather than prospective, potential impacts. The significant nature of his method has yet to be determined or measured.

Here, the Petitioner's letters do not contain specific, detailed information explaining the unusual influence or high impact his research or work has had on the overall field. Letters that specifically articulate how a petitioner's contributions are of major significance to the field and its impact on subsequent work add value.⁷ On the other hand, letters that lack specifics and use hyperbolic language do not add value, and are not considered to be probative evidence that may form the basis for meeting this criterion.⁸ 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 he has made original contributions of major significance in the field.

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media. 8 C.F.R. § 204.5(h)(3)(vi).

The Director determined that the published materials do not meet this criterion. On appeal, the Petitioner argues that the Director imposed "additional novel substantive and evidentiary requirements beyond those set forth in the regulations," in concluding that "[e]vidence of just 4 cited articles authored by [the Petitioner] with a total of 17 citations does not meet the plain language of this regulatory criterion and is not indicative of sustained national or international acclaim." We agree and the Director's determination on this issue will be withdrawn.⁹ The record demonstrates that the Petitioner has published 11 articles in professional scientific journals. Upon review, the evidence satisfies this criterion.

⁷ See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8-9.

⁸ *Id.* 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).

⁹ The level of recognition received by the Petitioner's articles would be more relevant to an examination of the totality of the evidence. As discussed above, where a petitioner provides qualifying evidence satisfying the initial evidentiary criteria, 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).

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 contends that he played a leading and critical role as a chief resident at [redacted] Hospital, [redacted] anesthesiology representative for [redacted] Medical College's Graduate Medical Education Council (GMEC), and anesthesiology lead for [redacted] Med's structural heart program, and references recommendation letters. 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.¹⁰ 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.¹¹

The letters, however, do not establish that he held a leading position, nor do they contain specific information signifying the Petitioner's critical roles.¹² For instance, on appeal, the Petitioner asserts that the evidence of the Petitioner's role as a [redacted] while training at [redacted] Hospital is sufficient to demonstrate that he has performed in a leading or critical role. The petitioner submitted a letter of support from [redacted] stating: "[The Petitioner] . . . attended the [redacted] Hospital anesthesiology residency from 2009-1012. He was an outstanding resident and an obvious choice for chief resident. His evaluations were the highest ever given to a resident at the time and they continue to be the standard by which all evaluations are measured." While it appears that the Petitioner performed admirably on the medical tasks to which he was assigned, there is no evidence demonstrating that his role as a chief resident physician was leading or critical for [redacted] Hospital. For example, there is no organizational chart or other evidence documenting where the Petitioner's chief resident position fell within the general hierarchy of the physicians employed by [redacted] Hospital. The Petitioner's evidence does not demonstrate how his temporary medical residency training appointment differentiated him from the numerous other physicians working at [redacted] Hospital, let alone the hospital's department heads. The documentation submitted by the Petitioner does not differentiate him from the hospital's other physicians so as to demonstrate his leading role and does not establish that he was responsible for the hospital's success or standing to a degree consistent with the meaning of "critical role."

The Petitioner also asserts that his service as the [redacted] anesthesiology representative for [redacted] Medical College's GMEC was a critical role for the college "because he was responsible for ensuring that [redacted] Medical College's [redacted] anesthesiology fellowship program meets the standards set forth by the [redacted]" Although the record contains a document indicating that in 2018 the Petitioner represented the [redacted] anesthesiology division at a GMEC meeting it does not demonstrate that in

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

¹¹ *Id.*

¹² See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 10 (stating that letters from individuals with personal knowledge of the significance of a petitioner's leading or critical role can be particularly helpful in making this determination as long as the letters contain detailed and probative information that specifically addresses how the role for the organization or establishment was leading or critical).

this role the Petitioner was responsible for the college's success or standing to a degree consistent with the meaning of "critical role."

Further, the Petitioner claims that he played a critical role for [redacted] Med as the anesthesiology lead for its structural heart program. The letters, however, do not establish that he held a leading position, nor do they contain specific information signifying the Petitioner's critical role to [redacted] Med. For instance, [redacted] professor and chair of the anesthesiology department at [redacted] Medical College, asserts that the Petitioner plays a critical role for the college as the anesthesia lead for the structural heart committee, in having "contributed to significant change in clinical anesthesia practice of structural heart disease patients" and having "earned recognition for his outstanding contribution to system development in relation to this program." The record contains the Petitioner's certificates of achievement for his work with the structural heart program between 2015 and 2017, including for outstanding contributions to transesophageal echocardiography (2016, 2017) and system development (2017).

[redacted] president and CEO of [redacted] Med, indicates that in his "critical" role with the structural heart committee the Petitioner leads the anesthesia team, performs clinical research studies that have improved fluoroscopic time, and implements best practices that have identified avoidable patient interventions. [redacted] executive vice president of [redacted] Med, asserts that the Petitioner plays a leading and critical role for the center as a structural heart anesthesiologist in collaborating with various teams including interventional cardiologists and cardiothoracic surgeons to advance research in anesthesia practices.

While the Petitioner has performed admirably as a structural heart anesthesiologist, the evidence does not establish that his role as anesthesiology lead for its structural heart program has been in a critical capacity for [redacted] Med. For example, while [redacted] mentions that the structural heart committee is comprised of a multi-disciplinary team of experts including cardiologists, interventional cardiologists, cardiothoracic surgeons, and cardiac anesthesiologists, the record does not contain an organizational chart or other evidence documenting how the Petitioner's position fits within the general hierarchy of the [redacted] Med and differentiates him from its physicians and anesthesiologists. Although the Petitioner's current position title includes structural heart committee anesthesiology "lead", it has not been established that he has a leading role within [redacted] Med as a whole. In addition, the documentation submitted by the Petitioner does not establish that he was responsible for [redacted] Med's success or standing to a degree consistent with the meaning of "critical role."

Finally, the evidence is insufficient to demonstrate that [redacted] Med qualifies as an organization or establishment that has a distinguished reputation, as required under 8 C.F.R. § 204.5(h)(3)(viii). The record contains articles from *Albany Business Review* and *Albany Times Union* that discuss [redacted]'s appointment as CEO of [redacted] Med, dated [redacted] 2019, respectively. However, the Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of filing and continuing through adjudication. See 8 C.F.R. § 103.2(b)(1). As he filed his petition in April 2019, the Petitioner did not demonstrate the reputation of [redacted] Medical College and [redacted] Medical Center prior to or at the time of his initial filing.

Notwithstanding the above, the *Albany Business Review* article indicates that [redacted] Med is "the region's largest health system." The *Albany Times Union* article states that [redacted] Med is "the largest

locally governed health system in the region” and “includes a [redacted] hospital, medical college, research hub, urgent care centers, multi-specialty centers, physicians offices, and affiliations with [redacted] Hospital and [redacted] Health in [redacted].” While these documents verify the size and growth of [redacted] Med, they are insufficient to establish that it has a distinguished reputation. The Petitioner did not include evidence, for example, showing the field’s view of [redacted] Med, and how its reputation compares to similar establishments, or how its successes or accomplishments relate to others, signifying a distinguished reputation consistent with the regulatory criterion.

In light of the above, the Petitioner has not satisfied 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 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). Although the Petitioner has reviewed papers for journals and has authored scholarly articles, the Petitioner has not established that his professional accomplishments have placed him among the upper level of his field.

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.