



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

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

In Re: 18347280

Date: DEC. 16, 2021

Appeal of Texas Service Center Decision

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

The Petitioner seeks to classify the Beneficiary, an infectious disease clinician, as an individual of extraordinary ability in the sciences. *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 Texas Service Center denied the petition, concluding that the Petitioner had established that the Beneficiary satisfied only two of the ten initial evidentiary criteria for the requested classification, 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 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 Beneficiary received his Bachelor of Medicine and Bachelor of Surgery (MBBS) and Doctor of Medicine degrees in general medicine from [redacted] Medical College in India in 2004 and 2007, respectively. In 2013, he completed his medical residency in internal medicine at [redacted] College in [redacted] Texas. Between 2013 and 2016, he completed a three-year fellowship in infectious disease at the [redacted] in [redacted] Minnesota. Since 2016, the Beneficiary has been employed by [redacted], a hospital located in [redacted] North Carolina, as an infectious disease physician.

A. Evidentiary Criteria

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). The Petitioner's documentary evidence indicates that the Beneficiary has peer-reviewed manuscripts for several journals including *American Journal of Transplantation*, *BMJ Case Reports*, and *Clinical Microbiology and Infection*. In addition, the Beneficiary has authored scholarly articles published in journals including *Clinical Infectious Diseases*, *Open Forum Infectious Diseases*, and *Journal of Virology*. Accordingly, we agree with the Director that the Petitioner fulfilled the requirements of the judging and scholarly articles criteria.

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

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 regulatory criterion at 8 C.F.R. § 204.5(h)(3)(v), a petitioner must establish that not only has the beneficiary made original contributions but that they have been of major significance in the field.¹ 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 record reflects that the Petitioner claimed eligibility for this criterion based on the Beneficiary's published research, citation record, letters from experts in the field, and other evidence.

On appeal, the Petitioner emphasizes that the Beneficiary has established himself as a gifted medical researcher, who has made original scientific contributions of major significance in the field of infectious disease, most notably in Human Immunodeficiency Virus (HIV) cure research and transplant/surgical medicine.² Here, although the Petitioner provided evidence reflecting the originality of the Beneficiary's research through recommendation letters praising him for his contributions, the letters are lacking detail explaining how his research findings have already been widely accepted and implemented in the field to the extent that they have been regarded as contributions of major significance. In general, the letters recount the Beneficiary's research and findings, and indicate their publication in journals.

For example, the Petitioner provided letters from [redacted] the Beneficiary's fellowship mentor at [redacted] and [redacted] the chair of [redacted]'s molecular medicine department, which state that the Beneficiary was the primary researcher on a study that focused on finding a cure for HIV which resulted in his 2017 *Plos One* article titled [redacted]

[redacted] First, we note the multiple identical statements in those letters suggest that their language was not written independently. While it is acknowledged 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 Beneficiary'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. 369, 376 (AAO 2010).

The aforementioned letters provide that the Beneficiary's research confirmed, for the first time, that [redacted] In addition, [redacted] speaks to the potential or future benefit of the Beneficiary's work, stating that his research "opened the door to other avenues of HIV cure research and expanded the boundaries of our knowledge regarding innovative HIV cure strategies" and that "human studies using the drugs identified in the Beneficiary's research are in the planning stages at [redacted]" but his

¹ See 6 *USCIS Policy Manual* F.2 appendix, <https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-2> (providing guidance on the review of evidence submitted to satisfy the regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x)) (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).

² Although we do not discuss every letter submitted, we have reviewed and considered each one.

assertions do not demonstrate the Beneficiary's research has already had an impact or influence commensurate with "major significance."

Further, [redacted] asserts that the Beneficiary's HIV cure research findings resulted in [redacted]'s obtainment of a renewal of National Institutes of Health (NIH) funding "because his research provided critical data supporting a pilot HIV cure study in HIV positive patients." However, receiving funding to conduct research is not a contribution of major significance in-and-of itself. Rather, the evidence must establish that receiving the grant is reflective of the Beneficiary's past work's major significance, or that his research conducted with the NIH grant resulted in a contribution of major significance in the field. [redacted]'s recommendation letter confirming that the Beneficiary's contributions directly led to the renewal of NIH funding, however, does not sufficiently illustrate how the funding reflects the importance of the Beneficiary's contributions, nor does it indicate the research results of the NIH funding and whether they are majorly significant in the field.

[redacted] program director of [redacted] Fellowship Training Program, described the findings of the Beneficiary's research study, published in his 2016 *Open Forum Infectious Diseases* article title [redacted]. He notes that the Beneficiary's article reported that, in the two years prior, [redacted] units used in [redacted] surgery were the suspected source of [redacted] contamination outbreaks of [redacted] patients in three European countries, and it also examined the first three known cases of [redacted] in U.S. patients who had similarly undergone [redacted] surgeries. [redacted] states that the article was the first to identify that, when present, this type of infection commonly exists in the eye, but he does not explain how that research finding went on to significantly impact or influence the field.

We note that the record does not support the assertion that in response to the Beneficiary's 2016 *Open Forum Infectious Diseases* article the U.S. Food and Drug Administration (FDA) "increased its monitoring of [redacted] cases and implemented mass screening of [redacted] units across the country," as maintained by the Petitioner and apparently confirmed by [redacted] and [redacted] also of [redacted]. Rather, articles previously submitted by the Petitioner indicate that the Beneficiary's article was preceded by the FDA's June 1, 2016, notification to hospitals to determine a method for patient follow-up and establish patient surveillance in the case of potential exposure, and its June 2016 recommendations for [redacted] unit sampling and monitoring.³ We may, in our discretion, use as advisory opinion statements from universities, professional organizations, or other sources submitted in evidence as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, we are not required to accept or may give less weight to that evidence. *Matter of Caron Int'l*, 19 I&N Dec. 791 (Comm'r 1988). Further, the evidence does not establish that the Beneficiary's research in this area was deemed a contribution of major significance in the field.

³ Those articles include a report from the FDA, with information current through [redacted] 2020, titled [redacted] [redacted] and a 2021 article from [redacted] titled [redacted] [redacted], which do not reference the Beneficiary by name or his 2016 *Open Forum Infectious Diseases* article in discussing actions taken by the FDA and the Centers for Disease Control and Prevention (CDC) in response to the risk [redacted]

[redacted] further provides that the Beneficiary was the lead author of the 2017 *EBioMedicine* article titled [redacted] and was the first U.S. researcher to identify and prove that [redacted] typically found in the [redacted], can be transmitted from an organ donor to an organ recipient during [redacted] transplant surgery. He indicates that the Beneficiary's research study examined [redacted] transplantation records between 1998 and 2015 and identified 7 previously unreported cases of [redacted] infection. He asserts that the Beneficiary's findings "resulted in [redacted] and other hospitals modifying the way in which organs are screened before they are transplanted" to include screening for [redacted] but he does not identify any other hospitals who have changed their pre-op surgery procedures as a result of the Beneficiary's research findings to support this claim. 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. *Visinscaia* 4 F. Supp. 3d at 134-135. He does not explain how the Beneficiary's work in that area has been particularly influential or impactful in the field or explain how it has been applied by others, so as to constitute a contribution of major significance within the meaning of 8 C.F.R. § 204.5(h)(3)(v).

Here, the letters do not contain detailed information showing the substantial influence the Beneficiary's contributions have had on the overall field. Letters that specifically articulate how a beneficiary's contributions are of major significance to the field and its impact on subsequent work add value. On the other hand, letters that lack specifics do not add value, and are not considered to be probative evidence that may form the basis for meeting this criterion.⁴ 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). Here, the letters do not, for example, indicate that therapeutic treatments were being developed as a result of the Beneficiary's research, that his clinical or research work has already had a widespread impact, or that it substantially influenced the nature or direction of research being conducted in his area of specialty, and the record does not contain supporting evidence demonstrating this influence. The record does not contain evidence sufficient to support the Petitioner's claim that the Beneficiary's work has already had a major influence in his field such as, for example, by significantly influencing treatment practices, development of therapeutics, or the direction of further research.

In addition, the Beneficiary's publications and citation history, considered independently and in context with the evidence as a whole, are insufficient to satisfy this criterion. The record provides evidence that the Beneficiary has published his research. Such evidence verifies that the Beneficiary has shared his original research. To satisfy this criterion, he must demonstrate that the reaction from others in the field is such that it supports a finding that his work rises to the level of "contributions of major significance" in the field. For example, 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 beneficiary's work as authoritative in the field, may be probative of the significance of their contributions to the field of endeavor.⁵

⁴ See 6 USCIS Policy Manual, *supra*, at F.2 appendix.

⁵ *Ibid.*

Regarding his citations, within his initial submission the Petitioner provided evidence from *Google Scholar* reflecting the Beneficiary's scholarly publications have received 229 cumulative citations. Specifically, the record shows that his three most cited articles at the time of filing received 79 (*Clinical Infectious Diseases*), 61 (*Open Forum Infectious Diseases*), and 48 (*Journal of Virology*), citations, respectively.⁶ Generally, citations to a given article can serve as an indication that the field has taken interest in a beneficiary's work; however, the fact that a beneficiary has published articles that other researchers have referenced is not, by itself, sufficient to establish that he meets this criterion. Here, the Petitioner has not presented evidence that establishes that the citation numbers recorded in *Google Scholar* confirm that one or more of the Beneficiary's publications has provoked widespread commentary or received notice from others working in the field at a level consistent with "contributions of major significance in the field." Nor has the Petitioner shown that the Beneficiary's work has been cited as authoritative in the field or has otherwise influenced the field in a significant way.

Further, 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 Beneficiary's research findings have remarkably impacted or influenced his field. Although the Beneficiary's citations indicate that others in the field have referenced his work, he did not establish that the submitted citation statistics alone reach the threshold of "major significance" as required by the regulation at 8 C.F.R. § 204.5(h)(3)(v). Considered together, the evidence consisting of the citation statistics and the reference letters from his colleagues establishes that the Beneficiary has been productive, and that his published data and findings have been relied upon by others in their own research. It does not demonstrate that the Beneficiary has made an original contribution of major significance in his field.

Further, the Petitioner has not established, as asserted, that publication of the Beneficiary's articles in highly ranked or popular journals inevitably demonstrates that the field considers the research and work to be an original contribution of major significance. Moreover, a publication that bears a high ranking or impact factor reflects the publication's overall citation rate; it does not show an author's influence or the impact of research on the field or that every article published in a highly ranked journal automatically indicates a contribution of major significance. Here, the Petitioner has not established that publication in a popular or highly ranked journal alone demonstrates a contribution 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 1115. 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.

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).

On appeal, the Petitioner reasserts that the evidence establishes the Beneficiary's leading or critical role for [redacted] in his current position as an infectious disease specialist and its distinguished reputation. It also maintains that the Beneficiary performed in a critical role as an infectious disease

⁶ The Beneficiary's remaining 13 articles and 1 medical textbook each garnered between 0 and 11 citations.

fellow at [redacted] The Director found that the Petitioner established the Beneficiary's critical role for [redacted] but did not show it has a distinguished reputation. As it relates to a leading role, the evidence must establish that a beneficiary 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 beneficiary 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 beneficiary's role, but rather the performance in the role that determines whether the role is or was critical.⁸

Regarding the Beneficiary's current position, the Petitioner references a letter from [redacted] [redacted] the senior vice president of medical affairs of [redacted] who asserts that the Beneficiary has performed in a critical role for the hospital as its first infectious disease clinician and the chair of the infectious disease department. [redacted] provides that the Beneficiary has developed and implemented the department and its outpatient practice and treated infectious disease cases that involve other departments such as cardiology, orthopedics, and obstetrics and gynecology, but he does not specify what duties those positions entail beyond the typical duties of a physician. In addition, he highlights the Beneficiary's roles on several of the hospital's committees, programs, and teams, including as treasurer of the executive committee, director of the internal medicine residency program, chair of the infection prevention and control committee, and designated safety officer of the hospital incident management team. The record contains additional documentation showing that in his position as designated safety officer the Beneficiary organized trainings to educate hospital staff on the CDC's COVID-19 prevention measures, testing criteria, and treatment recommendations between April 2020 and the date when the petition was filed in June 2020.

Here, the testimonial and documentary evidence did not provide sufficient context to show that the Beneficiary's positions in these bodies constituted a leading or critical role for [redacted] The documentation submitted establishes that the Beneficiary performed admirably in his role as an infectious disease clinician, but it does not offer probative details explaining how his role is a "leading" role based on his placement within the hospital's organizational structure,⁹ or provide sufficient support for a finding that his role was of significant importance to the hospital's standing or success consistent with the meaning of "critical role."

Further, the evidence is insufficient to demonstrate that [redacted] 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 shows that the hospital received a rating of 4 out of 5 stars in a 2020 survey of discharged patients by the Hospital Consumer Assessment of Healthcare Providers and Systems, on such topics as nurse, doctor, and medical staff communication, and hospital cleanliness and quietness. However,

⁷ See 6 USCIS Policy Manual, *supra*, at F.2 appendix.

⁸ *Id.*

⁹ The Petitioner provided an undated organizational chart of the positions and departments of [redacted] but it does not show where the Beneficiary's position fit within that organizational structure and it is unclear if it represents the general hierarchy of [redacted] at the time when the petition was filed. For instance, although the chart indicates the existence of a board of directors, several medical staff officer positions, and medical staff departments, the infectious disease department is not listed. Nor does the record contain other evidence documenting how the Beneficiary's position fit within the general hierarchy of [redacted] and differentiated him from its other principal doctors and medical staff department leaders, let alone its senior managerial staff.

a survey measuring patients' perceptions of their hospital experience does not demonstrate that the organization has a distinguished reputation in the field. Similarly, the Petitioner previously submitted [redacted]'s parent company's 2018 Annual Report and 2016 Research Highlights Report, and a Management Services Agreement showing [redacted] is part of a network of more than 600 care locations, but the Petitioner did not include evidence, for example, showing the field's view of the hospital, and how its reputation compares to similar establishments, or how its successes or accomplishments relate to others, signifying a distinguished reputation consistent with this regulatory criterion.

Regarding the Beneficiary's former position with [redacted] in their aforementioned letters [redacted] and [redacted] assert that [redacted]'s obtainment of NIH funding for a pilot HIV cure study based on the Beneficiary's HIV cure research findings demonstrates "the critical role he played during his fellowship at [redacted]. Although the Beneficiary has performed admirably on research projects, those letters do not provide sufficient support for a finding that the Beneficiary's fellowship role, while vital to [redacted]'s pilot HIV cure study, was of significant importance to the standing or success of [redacted] consistent with the meaning of "critical role." In light of the above, the Petitioner has not shown that he satisfies this criterion.

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field. 8 C.F.R. § 204.5(h)(3)(ix).

The Petitioner contends that the Beneficiary meets this criterion for the first time on appeal because "he commands a high salary in relation to other infectious disease physicians." However, as the Petitioner did not claim the Beneficiary's eligibility for this criterion before the Director, either at the time it filed the petition or in response to the Director's request for evidence, we will not consider this claim in our adjudication of this appeal. *See Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988) (providing that if "the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the denial, we will not consider evidence submitted on appeal for any purpose" and that "we will adjudicate the appeal based on the record of proceedings" before the Chief); *see also Matter of Obaigbena*, 19 I&N Dec 533 (BIA 1988).

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 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).

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.