U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 10948019

Date: JULY 8, 2021

Appeal of Nebraska Service Center Decision

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

The Petitioner, a neurological surgeon, seeks classification as an alien of extraordinary ability.[1] 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 Nebraska Service Center Director denied the Form I-140, Immigrant Petition for Alien Workers, concluding that the record did not establish that the Petitioner had a major, internationally recognized award, nor did it demonstrate that she met at least three of the ten regulatory criteria. The matter is now before us on appeal. The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence.[2] We review the questions in this matter *de novo*.[3] 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.

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[1] *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A).
[2] Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).
[3] *See Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015).

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."[4] The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate international recognition of his or her achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then he or she must provide sufficient qualifying documentation that meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)–(x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor.[5]

II. ANALYSIS

The Petitioner received her diploma of medicine in 2006 and later specialized in neurosurgery. After serving as the chief resident at [redacted] University in [redacted] the Petitioner embarked on two fellowships; one at [redacted] University in [redacted], and the second where she currently works at the University of [redacted] as a research fellow.

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). Before the Director, the Petitioner claimed to have met the following seven categories:

- Lesser prizes or awards;
- Membership;
- Published material;
- Participation as a judge;
- Contributions of major significance;
- Authorship of scholarly articles; and
- Performance of a leading or critical role for distinguished entities.

The Director decided that the Petitioner met two of the evidentiary criteria relating to judging and authorship of scholarly articles, but that she had not satisfied the remaining categories listed above. On appeal, the Petitioner maintains that she met the evidentiary criteria relating to each of the areas upon which the Director issued an adverse determination. After reviewing all of the evidence in the

[4] 8 C.F.R. § 204.5(h)(2).

[5] *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).

record, we agree with the Director that the Petitioner has satisfied the judging and the scholarly articles criteria, but not any of the remaining claimed classes of evidence.

> *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).

The Petitioner provided student awards, research grants, and travel awards under this criterion. The Director determined that the Petitioner did not meet these requirements and noted that student awards limited to a specific subset of individuals did not qualify because they excluded those already in the field. As it relates to the Petitioner's research grants and travel awards, the Director found that she did not establish these were awarded for excellence in the field. On appeal, the Petitioner responds to some of the elements the Director listed as shortcomings, but she still has not satisfied the plain language requirements of this criterion.

On appeal, the Petitioner claims the accolades she received as a student were the [redacted] University of [redacted] best young researcher, and the top researcher awards at the 10th and 11th research festival, respectively. The Director determined that these awards did not satisfy this criterion because they were limited to attendees at the issuing institution and because the Petitioner did not demonstrate that accolades from such a limited pool were given for excellence "in the field" rather than to those in training to join the field. Although the Petitioner's appeal brief mentions these student awards in passing, she does not contest the Director's decision or explain how those accolades qualify. Issues addressed in this perfunctory manner are considered abandoned on appeal.[6] The Petitioner does not assert eligibility on appeal relying on any research grants and we also consider those claims to be abandoned.[7]

The only travel award the Petitioner identifies on appeal is the 2013 [redacted] Young Researcher Award. A review of the evidence does not bear out that this award was for excellence in the field. The record contains documentation from the issuing organization that the competition included the following requirements: the applicants were from a pool who resided in the [redacted] who were under 40 years of age, and the candidates were at least published in a regional, non-indexed medical journal. Additionally, candidates for this award were "evaluated based on a predefined set of criteria including the relevance of the research question, its clinical impact, and novelty value, the study design, the results and their interpretation." The Petitioner has not explained how these cumulative factors would equate to recognition of "excellence in the field of endeavor." Furthermore, although some of the advisory letters from those in her field implied that this was a major award, they did not explain how this accolade was a nationally or internationally recognized award for excellence in the field of endeavor, and most contained very similar language listing the benefits the award's beneficiaries received.

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[6] *Minghai Tian v. Holder*, 745 F.3d 822, 827 (7th Cir. 2014) (stating that "an argument consisting of more than a generalized assertion of error" is required to hold that an issue has not been waived); *Desravines v. U.S. Atty. Gen.*, 343 F. App'x 433, 435 (11th Cir. 2009) (a passing reference in the arguments section of a brief without substantive arguments is insufficient to raise that ground on appeal). *See, e.g., Leer v. Murphy*, 844 F.2d 628, 634 (9th Cir. 1988) ("Issues raised in a brief that are not supported by an argument are deemed abandoned.").

[7] *Matter of Zhang*, 27 I&N Dec. 569 n.2 (BIA 2019) (finding that an issue not appealed is deemed as abandoned).

After considering the Petitioner's claims and evidence, she has not met the plain language requirements of this criterion.

> *Documentation of the alien'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 claimed her membership in three organizations. After reviewing the Petitioner's material, the Director determined that she did not meet the requirements of this criterion because she did not establish that the organizations required outstanding achievements as a condition of membership. Within the appeal, the Petitioner does not identify any error on the Director's part as it relates to this criterion. Instead, she maintains that the memberships she has attained qualify under this criterion.

After reviewing the record, we agree with the Director that the Petitioner has not established that any of the claimed organizations require outstanding achievements to qualify for membership. First, we consider the American Association of Neurological Surgeons (AANS). The Petitioner presented evidence that she held "resident/fellow" membership in this organization. She submitted the AANS membership requirements for the resident/fellow level, which consisted of "proof of enrollment in a verifiable non-North American neurosurgical training program," and "a recommendation for membership by your training program director." Absent from this material is a showing that AANS utilized nationally or internationally recognized experts to judge the achievements of prospective members to determine if the achievements were outstanding. Also lacking was an indication that AANS used this outstanding determination as a condition of eligibility for membership at the resident/fellow level. Each of these are mandatory requirements within the regulation.

The next organization was the Congress of Neurological Surgeons (CNS) and the Petitioner was a member at the resident level. The Petitioner submitted CNS' bylaws reflecting resident membership will "be available to any resident in good standing in" certain accreditation organizations in the United States, Mexico, or Canada, "or any fellow in a fellowship immediately following completion of an accredited neurological surgery training program." These standards do not reflect that CNS requires outstanding achievements of its resident members, and as such this organization does not satisfy this criterion's requirements.

Finally, the Petitioner discusses the European Association of Neurosurgical Societies (EANS). The Petitioner documented her membership in this organization. The material relating to EANS reflected that candidates who pass both parts of a board examination would be appointed as a Fellow of the European Board of Neurological Surgery (FEBNS). The Petitioner asserts that EANS membership as a fellow in FEBNS "is evidence of the excellence in neurosurgery that a major society in Europe appointed non-European citizens from the [redacted] as a" FEBNS fellow. The Petitioner did not explain how, and the record lacks documentary support for her conclusion that, as a condition of membership simply passing two board examinations amounts to outstanding achievements. It is insufficient to allege eligibility through conclusory assertions that are not supported by sufficient

evidence, which proves the allegation.[8] As a result, the Petitioner has not shown that EANS membership qualifies under this criterion.

On appeal the Petitioner places significant focus on aspects outside of the minimum membership requirements of each entity (e.g., statements made within multiple advisory letters), but she does not explain how any of the organizations require outstanding achievements as one of the minimum requirements for membership. For the reasons stated above, the Petitioner has not established eligibility under 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).

Before the Director, the Petitioner provided information relating to published comments about three of her recent scholarly articles. The Director did not consider citations to her scholarly work to meet the plain language requirements of this criterion as that material was not "about the alien" and instead was focused on her scholarly work. On appeal, the Petitioner shifts her focus from the claims and evidence she offered the before Director to a public announcement relating to an award.

As evidence of published material about her, the Petitioner identified a public announcement about her receipt of the [redacted] award on the issuing entity's website. Here, the Petitioner did not provide the elements required by the regulation in the form of the material's date and author. This shortcoming alone means this evidence cannot meet this criterion's requirements. Additionally, the Petitioner did not offer any discussion of how the posting of competition results on this organization's website equates to one of the qualifying publication types (a professional or major trade publication or other major media). Therefore, the Petitioner has not submitted evidence that meets the plain language requirements of 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).

The Petitioner presented evidence that she has reviewed manuscripts submitted for publication in BMJ Case Reports. The Director determined that the Petitioner met the requirements of this criterion and we agree with the Director's conclusion.

> *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 provided citations to her published work, to include scholarly articles and book chapters, as well as several advisory letters from those in her field that discussed her work. The Director determined that the Petitioner did not meet the requirements of this criterion. In particular,

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[8] *Matter of Ho*, 22 I&N Dec. 206, 213 (Assoc. Comm'r 1998); *Fano v. O'Neill*, 806 F.2d 1262, 1266 (5th Cir. 1987); *1756, Inc. v. Att'y Gen*, 745 F. Supp. 9, 17 (D.D.C. 1990).

the Director noted the Petitioner's citations to her published works, but concluded that she did not demonstrate her record established that she had a citation record that measured up to other neurosurgical researchers and in turn, she did not show that her work was of major significance in the field. The Director also briefly discussed the advisory opinion letters but did not find that they collectively showed that she meets this criterion. In order to satisfy the regulation at 8 C.F.R. § 204.5(h)(3)(v), a petitioner must establish that not only has she made contributions that were original but that they 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 it, or have otherwise risen to a level of major significance in the field.

On appeal, the Petitioner does not identify any particular error the Director may have committed under this requirement other than to disagree with his adverse conclusion. Although the Petitioner adds similar claims relating to her evidence, she does not offer any particular information for us to consider beyond what the Director evaluated. Some of the information and evidence the Petitioner offers within the appeal, to include citations to her work, postdates the Form I-140 filing date. A petitioner must establish eligibility at the time it files the nonimmigrant visa petition.[9] USCIS may not approve a visa petition if the Petitioner was not qualified at the priority date but expects to become eligible at a subsequent time.[10] When she filed the petition, the Petitioner provided evidence about her citation record from *Google Scholar* reflecting her publication of 22 articles that had garnered citations.

Other researchers' reliance on the Petitioner's work is a positive element and can be a method to corroborate the assertion that her noteworthy influence on other's work establishes that her contributions in the field are of major significance. However, The Petitioner has not sufficiently explained how a scholarly article receiving 24 citations, or 21 other articles sharing 87 citations, exhibits her impact within the field in a manner consistent with this criterion's requirements. For example, she did not provide the citation rates of other published research in her field that is widely recognized as a contribution of major significance for comparison purposes. Nor has the Petitioner shown that a notable number of the citing authors placed unusual reliance on her work. Specifically, the example citations in the record cite the Petitioner's study as one of dozens of other studies, and do not single out the Petitioner's work as significantly notable among other research in the field.

On appeal, the Petitioner claims that her citation record "is quite large since the community of Neurological surgeons is small . . . ." Even though the Petitioner provided advisory opinion letters whose authors claimed that the field related to neurological surgery is a small percentage of physicians worldwide, neither the authors nor the Petitioner offered probative material to enable us to evaluate that claim. We note that some of the published material citing to her work has garnered significantly more cites than any of her own articles. For instance, her article titled, [redacted] had received five cites at the time she filed her petition. One of those articles that cited to her work titled, [redacted] received at least 355 citations by the time the Petitioner filed her Form I-140. This article citing to her own work was published approximately six months later, yet it garnered exponentially more attention than

[9] 8 C.F.R. § 103.2(b)(1), (12).
[10] *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971).

even the Petitioner's most cited work. This tends to undermine the claims that her citation record is large because her specialized field contains fewer participants.

Additionally, the article titled, [redacted] earned more than 100 cites by the Petitioner's priority date, yet her article that this work cites to was her most favorable piece with only 24 citations. Although her citations indicate some in the field have referenced her work, the Petitioner did not offer comparative material showing her citation numbers rose to the level of major significance consistent with this regulatory criterion.[11]

As it relates to the advisory opinion letters in the record, they do not describe significant contributions the Petitioner has already made in the field. For instance, [redacted], a professor and the director of the [redacted] surgery program at the University of [redacted] who supervises the Petitioner's fellowship, discussed how the citations to her work had increased from 57 at the start of her fellowship to 111 on the petition filing date. He surmised that this demonstrated that her "work has been among the most cited in the field in the past several years, and she has been consistently cited more than one would expect from an average researcher in the Neurological Surgery field." Absent additional evidence, an above average citation rate is insufficient to demonstrate the Petitioner has made contributions of major significance in her field. Contributions of major significance connotes that the Petitioner's work has significantly impacted the field.[12]

[redacted] also discussed the prevalence and costs of neurological diseases and tied those important factors to some of the Petitioner's work. In particular he focused on a new surgical approach the Petitioner described in a published article. [redacted] noted this procedure received editorial comments from leading surgeons and concluded that "[t]his provides just one example of the importance of her published work, providing evidence of how her prospective work can revolutionize . . . treatment options, by the careful development and researching of new techniques." He further stated that her "work will provide substantial benefits to the United States by improving treatments and lowering medical costs." While a prospective benefit to the United States is one of this classification's separate requirements, [redacted] did not describe how the Petitioner's work has already been so influential on her field. Although the procedure [redacted] highlighted would appear to be an incremental improvement to the general pool of knowledge, the record does not support the position that this development was widely adopted in her field at the time she filed the petition.

When reviewing the letter from [redacted], a professor at [redacted] University and her supervisor at her fellowship at his university, we observe that he presented identical language found within [redacted] s letter relating to the Beneficiary and the importance of her work. Considering the remaining portion of [redacted] 's letter, he discussed the Petitioner's achievements and career, and he noted one of the Petitioner's published works that included a video received over 1,200 views on the Journal of Neurosurgery's YouTube channel. [redacted] asserted that because this video accumulated the highest number of views in comparison with other articles in the same publication issue, that this proved

[11] *See* 6 *USCIS Policy Manual* F.2 app., https://www.uscis.gov/policymanual (*Policy Manual*) (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).

[12] *See* 8 C.F.R. § 204.5(h)(3)(v); *see also Visinscaia*, 4 F. Supp. 3d at 135–36.

the importance of her work. First, although the Petitioner provided material relating to this video reflecting over 1,100 views, she did not offer material relating to the other videos in this same publication that [redacted] referenced, and thus the record does not support his assertions. Second, even if [redacted]'s claims are true, his letter does not establish that the video made a significant impact within the Petitioner's field.

The remaining letters the Petitioner submitted briefly discussed her skills and achievements, but they did not contain specific, detailed information explaining the unusual influence or high impact her 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.[13] 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.[14] As a result, the Petitioner has not submitted evidence that meets the plain language requirements of this criterion.

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 Petitioner submitted evidence of serving as the author of several published scholarly articles in addition to multiple chapters in a scientific handbook related to her field. The Director determined that the Petitioner met the requirements of this criterion and we agree with that determination.

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).

Before the Director, the Petitioner claimed she performed in a leading or critical role by presenting her work at professional conferences, and for three instances in which she served as a course instructor at the University of [redacted] The Director determined that the Petitioner did not meet the requirements of this criterion. The Director noted that conference presentations did not satisfy the requirement that she perform the qualifying role for an organization or establishment with a distinguished reputation. Relating to her role as a course instructor, the Director concluded that the Petitioner did not show her role was leading or critical for the university as a whole, rather than for one of its components or departments.[15]

Within the appeal the Petitioner presents the same claims she offered before the Director. Her appeal brief does not make any reference to the Director's analysis, nor does it explain how he might have erred in his adverse conclusion under this criterion. Simply disagreeing with the Director's determination (1) without explaining how she performed in a leading or critical role through presenting her work and training the next generation of neurosurgeons, and (2) without documenting that she performed those roles for entities with a distinguished reputation, is insufficient within these proceedings. After reviewing the entire record, to include the arguments and evidence submitted on

[13] *Policy Manual, supra.*

[14] Policy *Manual, supra.*

[15] Evidence under this criterion must provide specifics relating to how the Petitioner's role was critical to the organization as a whole instead of for a sub-element within the organization. *Strategati, LLC v. Sessions*, No. 3:18-CV-01200-H-AGS, 2019 WL 2330181, at *7 (S.D. Cal. May 31, 2019); *Noroozi v. Napolitano*, 905 F. Supp. 2d 535, 545 (S.D.N.Y. 2012).

appeal, we adopt and affirm the Director's analysis and ultimate conclusion under this criterion.[16] Consequently, the Petitioner has not demonstrated her eligibility under this criterion on appeal.

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 that goal. USCIS has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard.[17] 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.[18] Moreover, the record does not otherwise demonstrate that the Petitioner has garnered 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.[19] Even within her response to the Director's RFE, the Petitioner indicated she intends to work as a fellow, which is generally accepted as training prior to embarking on a career in a specialty field.

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.

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[16] *See Matter of P. Singh, Attorney*, 26 I&N Dec. 623 (BIA 2015) (citing *Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994)); *see also Chen v. INS*, 87 F.3d 5, 7-8 (1st Cir. 1996) (finding that if a reviewing body decides that the facts and evaluative judgments prescinding from them have been adequately confronted and correctly resolved by a previous entity, then the appellate body is free to adopt those findings provided the appellate decision reflects individualized attention to the case).

[17] *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994).

[18] H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act.

[19] *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2).