



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

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

In Re: 18141694

Date: JUL. 15, 2021

Appeal of Nebraska Service Center Decision

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

The Petitioner, a legal consultant, 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 record did not establish that the Petitioner met the initial evidentiary requirement for the requested classification through evidence of either a major, internationally recognized award or that she meets at least three of the evidentiary criteria under 8 C.F.R. § 204.5(h)(3).

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) 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

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 Petitioner has worked as an attorney and legal consultant for several years in her native [redacted] and holds a Ph.D. in public and constitutional law from the University [redacted]. At the time of filing she was pursuing a degree in business administration at [redacted] Community College in Michigan. She initially indicated that she wished to pursue an academic research position in the United States, but in response to the Director's request for evidence (RFE) submitted a letter from a private law firm expressing interest in employing her as an attorney advisor.

### 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 Director found that the Petitioner met two of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), relating to her membership in associations in her field and her authorship of scholarly articles. On appeal, the Petitioner asserts that she also meets the evidentiary criteria relating to original contributions of major significance to her field. After reviewing all of the evidence in the record, we agree with the Director's decision in part, but withdraw his conclusion regarding the Petitioner's membership in associations in her field.

*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)

As stated in the Director's RFE, in order to meet this criterion, a petitioner must show membership in an association, that that association is in their field of expertise, that it requires outstanding achievements of its members, and that those achievements are judged to be outstanding by recognized

experts. Here, the Petitioner asserts that her membership in the International Society of Public Law, or ICON-S, qualifies under this criterion.<sup>1</sup>

Regarding her membership in this association, the Petitioner submitted evidence that she presented papers at ICON-S conferences in 2014 and 2015, and also attended a 2016 conference. Although this is not direct evidence of her membership, we acknowledge that, in general, those who present papers at professional and academic conferences are members of the association holding the conference.

Turning to the requirement of outstanding achievements for members element, the Petitioner referred to the association's website and provided a list of short biographies of ICON-S members who had been voted onto the association's council, asserting that these individuals are responsible for judging memberships to ICON-S. However, although the website referred to in her RFE response<sup>2</sup> does list the names and positions of these individuals, and all appear to be experts in the field of law, the webpage makes no mention of their involvement in the judging of membership applications. In addition, the record does not include evidence of what the association's membership requirements are, despite the Director's explicit request in his RFE.<sup>3</sup> As the Petitioner has not established that the association requires outstanding achievements of its members, as judged by national or international experts in their fields, we disagree with the Director and withdraw his finding that she meets this criterion.

*Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.* 8 C.F.R. § 204.5(h)(3)(v)

In order to satisfy the regulation at 8 C.F.R. § 204.5(h)(3)(v), a petitioner must establish that not only have they made original contributions, but that those contributions have been of major significance in the field. For example, a Petitioner may show that their 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.<sup>4</sup> Here, the Petitioner asserts that her Ph.D. thesis is an original contribution to the field of law, and that several reference letters in the record show its major significance to that field.

The first such letter was written by [redacted] who indicates that he is an advisor to the Supreme Court of [redacted] and has known the Petitioner since 2004 as a law school classmate.<sup>5</sup> He states that he has read the Petitioner's thesis, and describes it as "a very distinguished study" which "provides many thoughtful insides [*sic*] in the [redacted] comparative constitutional law." However, he does not elaborate on which insights in the thesis he feels are valuable, nor does he state that they have been of any significance to the field of law.

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<sup>1</sup> While the Petitioner also submitted evidence of her membership in other associations, she explained in her response to the Director's RFE that this evidence "is only to demonstrate that even after coming to the U.S., I have continued to study and be recognized as an excellent student and leader in the U.S." We will therefore not consider this evidence in evaluating her qualification under this criterion.

<sup>2</sup> <https://www.icon-society.org/governance/council-elections/>, accessed on July 15, 2021.

<sup>3</sup> A different page on the association's website explains its membership requirements, which consist of filling out an electronic form and paying an annual membership fee. <https://www.icon-society.org/join/>, accessed on July 15, 2021.

<sup>4</sup> See *Visinscaia*, 4 F. Supp. 3d at 134-35.

<sup>5</sup> All reference letters in the record have been reviewed, including those not specifically mentioned in this decision.

Another reference letter was written by [redacted] who teaches at the [redacted] School for Magistrates and is a former Deputy Minister of Justice. He writes that he mentored the Petitioner in her legal studies, and was part of her dissertation committee. In addition to noting that she scored 97 out of 100 points for her dissertation, he states that she has “an original style of writing and has impressed me with her strong legal logic.”<sup>6</sup> [redacted] further writes that the Petitioner is “trustworthy, honest, and good moral,” and notes her participation in a conference in New York. But he does not indicate that her thesis has contributed to the field of law by having an influence or impact on the work of others, or that it is otherwise of major significance.

[redacted] Deputy Chief of the General Staff of the [redacted] indicates in her letter that she “has had the chance to read some of [the Petitioner’s] papers and her research skills are admirable.” She goes on to write that she considers the conclusions in the Petitioner’s thesis to be “unique and interesting,” and that she has “taken [them] into consideration for my own research.” However, [redacted] does not explain which of the Petitioner’s conclusions are unique and interesting or in what way they are unique and interesting. In addition, she does not describe her own research, or how she has applied the Petitioner’s work to expand upon that research.

Other letters in the record are complimentary of the Petitioner’s intellectual capabilities, professionalism, and personal characteristics, and generally recommend her as a talented lawyer. Two of the letters praise her job performance with two private law firms, and another indicates that she was a successful student during her legal studies. None of them provide a detailed description of her Ph.D. thesis, its contribution to the field of law, or how it has been of major significance.

On appeal, the Petitioner makes several arguments to support her assertion that the Director did not give sufficient weight to the reference letters. In particular, she challenges his citation to *Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm’r 1988), asserting that the Director improperly referenced this decision and failed to consider this expert testimony. In addition, she urges us to consider the credentials of the letter writers, noting that they are top experts in the field of law.

We have thoroughly reviewed these letters, and all of the evidence in the record, per our *de novo* review. While we do not question the credibility or qualifications of the writers, the letters they have written do not provide more than a brief and shallow description of the Petitioner’s work, despite the fact that two of the writers identify themselves as members of her dissertation committee. Reference letters that do not specifically identify contributions or provide specific examples of how those contributions influenced the field are insufficient. *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009) *aff’d in part* 596 F.3d 1115 (9th Cir. 2010). In 2010, the *Kazarian* court reiterated that the AAO’s conclusion that the “letters from physics professors attesting to [the petitioner’s] contributions in the field” were insufficient was “consistent with the relevant regulatory language.” 596 F.3d at 1122. Here, references to “conclusions” and “insights” without further detail are not sufficient to describe the nature of the contribution the thesis has made to the field.

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<sup>6</sup> On appeal, the Petitioner argues that the Director did not consider the full text of this letter, and provides a quotation that she asserts was written by [redacted]. However, the letter in the record does not include the majority of that quoted language, nor does it appear in any of the other reference letters.

In addition, neither the reference letters or other evidence in the record demonstrates that her Ph.D. thesis has been impacted or influenced others in the field of law such that it is of major significance. While the Petitioner refers to *Kazarian* in suggesting that the Director imposed novel requirements when noting the lack of evidence of citations to the Petitioner's thesis and her other published work, the referenced language concerns the criterion at 8 C.F.R. § 204.5(h)(3)(vi). Citations to a petitioner's published work, or other evidence that scholarly presentations or articles have provoked widespread commentary or received notice from others in the field, are among the evidence that may be probative of the significance of contributions to a field of endeavor under 8 C.F.R. § 204.5(h)(3).<sup>7</sup> As the record does not include such evidence, or other evidence pertaining to the significance of the Petitioner's contribution, we agree with the Director and find that the Petitioner does not meet 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 record includes copies of articles authored by the Petitioner which have been published in peer-reviewed journals or presented at professional conferences. We therefore agree with the Director's conclusion that the Petitioner meets 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 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 national or international acclaim in the field, and that 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 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.

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<sup>7</sup> See 6 USCIS Policy Manual F.2(B)(2), <https://www.uscis.gov/policymanual>

**ORDER:** The appeal is dismissed.