



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

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

In Re: 12965137

Date: MAR. 15, 2021

Appeal of Nebraska Service Center Decision

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

The Petitioner, an agricultural products and services company, seeks classification of the Beneficiary 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 Beneficiary met the initial evidence requirements through either receipt of a major, internationally recognized award or meeting at least three of the evidentiary criteria at 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 Beneficiary is currently employed by the Petitioner as an agricultural data scientist. She earned a master's degree in agricultural meteorology from [redacted] University in 2013, and a Ph.D. degree in agricultural meteorology and agronomy from the same institution in 2017. The Petitioner indicates that it intends to continue to employ the Beneficiary in the United States to develop crop simulation platforms.

A. Evidentiary Criteria

Because the Petitioner has not indicated or established that the Beneficiary has received a major, internationally recognized award, it must show that she satisfies at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Director found that the Beneficiary met two of these criteria relating to her authorship of scholarly articles and her participation as a judge of the work of others in her field. On appeal, the Petitioner asserts that the Beneficiary also meets four additional evidentiary criteria, has sustained national or international acclaim, and is one of the small percentage of those at the top of her field. After reviewing all of the evidence in the record, we agree with the Director and find that the Beneficiary does not meet the initial evidentiary requirements of this classification and is not an individual of extraordinary ability.

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)

To meet the requirements of this criterion, a petitioner must show that material has been published, that the material is about the alien and his or her work in the field for which classification is sought, and that it was published in a professional or major trade publication or other major media. In this case, the Petitioner initially submitted two articles about research on crop models in which the Beneficiary participated. The first article, posted on the website of [redacted] University, discusses the work of the school's researchers as part of the [redacted] project, and includes a

single sentence identifying the Beneficiary and another in which she describes the applications of this work. However, the totality of this published material is about the research, not the Beneficiary. The second article, published on the website farmweeknow.com, is an edited version of the first article. It does not include the Beneficiary's information or quotation, and is similarly not about her. In addition, the Petitioner did not submit evidence which demonstrates that either of these websites are one of the qualifying types of media under this criterion.

In responding to the Director's request for evidence (RFE), the Petitioner submitted chapters of a monograph published by the American Meteorological Society. Both chapters include citations to a paper about the [redacted] dataset added to the [redacted] surface model, which was authored by the Beneficiary and published in a scientific journal in 2016. Although both chapters include brief descriptions and comments on the Beneficiary's work, they also discuss the work of hundreds of other scientists who published articles in the area of atmospheric sciences, the broad subject of the monograph. In addition, although she is identified as an author in each of these citations, following the accepted format for citations, the chapters do not provide any additional information about the Beneficiary, and thus cannot be said to be about her. Therefore, after review of the evidence submitted in support of this criterion, we agree with the Director and conclude that the Beneficiary does not meet 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 specialization for which classification is sought. 8 C.F.R. § 204.5(h)(3)(iv)

The record includes emails from scientific journals such as *Agronomy, Sustainability, and Journal of the Meteorological Society of Japan* thanking the Beneficiary for her review of manuscripts submitted to them for publication. We note that other emails in the record from journals which invite the Beneficiary to review manuscripts do not show that she actually judged the work of others. Based on the evidence of the peer reviews that the Beneficiary completed, however, we agree with the Director's conclusion 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)

"Contributions of major significance" connotes that the Beneficiary's work has significantly impacted the field. *See Visinscaia*, 4 F. Supp. 3d at 134. 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.

In his decision, the Director acknowledged that the evidence, including reference letters, citations to the Beneficiary's publications, and other evidence, shows the Beneficiary's contribution to the [redacted] model and the [redacted] project, but concluded that it did not demonstrate that this work was original or was of major significance in the field. On appeal, the Petitioner asserts that the preponderance of the evidence, including 14 reference letters from experts in the Beneficiary's field, shows that her contributions are both original and of major significance, as her [redacted] models are in use by researchers and agricultural managers in more than 160 countries.

We first note that the evidence of the Beneficiary's publications and abstracts presented at scientific conferences, as well as the evidence of her contributions to weather and crop models, shows that her work in the field is original. We will therefore focus on whether the Petitioner has shown that these contributions are of major significance to the field.

Of the reference letters submitted by the Petitioner, several were written by scientists the Beneficiary collaborated or otherwise worked directly with.¹ In general, such letters may provide details regarding her role in specific research projects, but do not demonstrate that this work was been of major significance to the field beyond her group of collaborators. A letter from [redacted] a professor at [redacted] University, focuses on the Beneficiary's work on the [redacted] project during her studies there. [redacted] states that the Beneficiary was one of the project's lead [redacted] modelers, and that the [redacted] dataset she developed, based upon a NASA framework, allowed for regional-scale modeling studies and "filled the gaps in historical observations." She further writes that this work "enables further studies on assessing the [redacted] risks at a larger spatial scale," and that the [redacted] project as a whole "was featured in over 170 trade and popular press articles."

The Beneficiary's graduate advisor at [redacted] [redacted] also submitted a reference letter describing her work and its impact on the field. He goes into great detail about the Beneficiary's work to develop a [redacted] modeling framework, and her adaptation of the NASA framework for [redacted] models into her [redacted] modeling framework. [redacted] also describes her work on the [redacted] model as a "breakthrough contribution," as it emphasized the interaction between [redacted] and allows the [redacted] model "to develop [redacted] feedback data more accurately." Finally, he notes that the Beneficiary's introduction of [redacted] information into [redacted] improved [redacted] simulation by 20%.

[redacted] of the National Center for [redacted] where the Beneficiary worked for three summers during her studies, is another of the Beneficiary's collaborators and also describes her development of the [redacted] model, which he states "improves the [redacted] forecasting for agricultural areas." He also writes that the [redacted] model "is the world's most widely used numerical [redacted] prediction model and has more than 20,000 active users..."²

Other reference letters were written by other researchers who know of the Beneficiary's work, including some who have cited to it in their own published research. One of these was submitted by [redacted] of the National Institute of Technology [redacted] in India. He states that his group "referred [the Beneficiary's] assessment of a high spatial resolution [redacted] dataset," and that they "leveraged" her techniques in developing a dataset for the [redacted] region. He concludes that the Beneficiary's research "provides a reliable reference for international researchers."

[redacted] of [redacted] University also states that she has cited to the Beneficiary's published research in her own work, noting that she did so in a review article "as an example of the efforts that enhanced the representation of agriculture." She also indicates that she

¹ All of the reference letters have been reviewed, including those not specifically mentioned in this decision.

² Other evidence in the record puts the number of users at 48,000.

attended a workshop in France where the Beneficiary presented her work in the [redacted] project, which provides “useful datasets/tools and a solid ground for future researchers and agricultural producers.” Another researcher who cited to the Beneficiary’s work is [redacted] of the University of [redacted] in Canada, who notes that the [redacted] model developed by the Beneficiary “takes account of [redacted] varieties and field management information” and was implemented into the [redacted] and [redacted] version 3.9 and provides “improved representation and simulation of [redacted] surface conditions.” [redacted] also states that besides improving the accuracy of [redacted] forecasts, the model can be used to study the impact of [redacted] on [redacted]. She indicates that her team was able to add additional [redacted] to the framework developed by the Beneficiary.

These letters demonstrate that the Petitioner added valuable functionality to an existing numerical [redacted] model, and provided useful tools related to [redacted] for agricultural producers and researchers. Although other researchers have been able to build upon and apply this work in their own research, the record does not support the statements in these letters which proclaim her work to be a breakthrough or otherwise show that it has been of major significance.

For example, although many of the letter writers agree that the addition of [redacted] improved the accuracy of the [redacted] model, the complete page from the [redacted] Users Page website³ showing the updates in version 3.9 includes many updates in addition to those to which the Beneficiary contributed. As stated in the Director’s decision, the [redacted] model was released several years prior to the addition of the Beneficiary’s updates, and the [redacted] Users Page indicates that many researchers have contributed to its improvement over those years. This is also shown by a page on the website for the University Corporation for Atmospheric research (UCAR) describing the [redacted] which lists the Beneficiary’s [redacted] model as one of several “new parameterizations” added. While the letters show that her contributions to an already popular [redacted] model have been implemented by others, the evidence does not establish that the extent to which they have done so is indicative of a contribution of major significance.

Turning to the Beneficiary’s work on the [redacted] project, evidence in the record shows that the tools developed were used to support decisions on over 15.5 million acres of [redacted] and resulted in the publication of 50 peer-reviewed journal articles. [redacted] who served as the [redacted] project manager for the six years of its existence, writes that the project “significantly improves the usability of [redacted] information for agricultural production,” and that the Beneficiary “made essential contributions to the project.” However, the Beneficiary’s field is [redacted] modeling or agricultural data science, and thus it is her impact upon others in that field rather than agricultural production that must be demonstrated. Statements from some of the other letters indicate that the Beneficiary’s work allowed for [redacted] modeling and resulted in conference presentations and journal articles, but the evidence does not indicate that it widely impacted other researchers in her field.

As noted by the Director in his decision, the record includes a copy of the Beneficiary’s Google Scholar profile showing her publications and presentations and the number of times they have been

³ The record includes only a portion of this webpage, available at [https://\[redacted\]](https://[redacted])

cited by other researchers. This evidence corroborates the statements from some of the letter writers concerning their citation of her work, but does not provide a basis for comparison to other researchers in her field by which the extent of the impact of the Beneficiary's work may be determined. Without such evidence, we do not find that the record demonstrates that the Beneficiary's work on the [] project has remarkably impacted or been implemented in her field.

Accordingly, we agree with the Director and do not find that the Beneficiary meets 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 copies of papers co-authored by the Beneficiary which were published in scientific journals such as *Earth Interactions*, *Climate Risk Management*, and *Geophysical Research Letters*. We agree with the Director that this evidence shows that she meets this criterion.

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)

To show that an individual has performed in a critical role, the evidence must establish that they have contributed in a way that is of significant importance to the outcome of the organization or establishment's activities. A supporting role may be considered "critical" if the individual's performance in the role is (or was) important in that way.⁴

In his decision, the Director determined that the Petitioner had not established that the Beneficiary's role as an agricultural data scientist distinguished her from other scientists it employs, and thus that it was a critical role. On appeal, the Petitioner argues that this criterion and associated guidance does not require that the Beneficiary's role be distinguished from that of other scientists it employs in order to show that it is critical. While such evidence may assist in showing the importance of the role to the organization's activities, we agree that it is not required.

In support of its claim to this criterion, the Petitioner submitted two letters from company officials describing the Beneficiary's work and its importance. The first, from a human resources executive, explains that that the Beneficiary "reports her scientific discoveries with traders in order to help drive market discussions and implement trade ideas," and through her modeling and analysis of agricultural systems provides "new opportunities to optimize [] and revenue projections." The letter goes on to state that she is "the highest-level Data Scientist in our company," and that the real-time [] data provided by her platform is "critical for decision-making in the agribusiness sector."

The second letter, submitted in response to the Director's request for evidence (RFE), reiterates the statements from the first letter, and adds that the Beneficiary's research in [] modeling "has significantly advanced our ability to predict commodity trade pricing, which directly impacts

⁴ 8 C.F.R. § 204.5(h)(3)(viii); See also USCIS Policy Memorandum PM 602-0005.1, *Evaluation of Evidence Submitted With Certain I-140 Petitions; Revisions to the Adjudicator's Field Manual (AFM) Chapter 22.2, AFM Update AD11-14*. (Dec. 22, 2010), <https://www.uscis.gov/policymanual/HTML/PolicyManual.html>.

[redacted]s profitability.” It goes on to state that her analysis of [redacted] is included in the company’s weekly research reports related to global food supply and demand, and that “more than 100 economic analysts and commodity traders” use her analysis to make vital business decisions.

Upon review, this evidence is insufficient to demonstrate that the Beneficiary plays a critical role for the Petitioner or its parent company, [redacted]. Although both letters indicate that she provides data and analysis that are important for market and trade discussions, and that commodity traders use her reports to make decisions, the evidence does not provide sufficient information to determine the Beneficiary’s individual impact on the Petitioner’s or its parent company’s overall operations. The letters indicate that both [redacted] and the Petitioner have global operations which span the areas of fertilizer supply, processing and transportation of agricultural commodities, production of food products and the supply of raw materials and services to the biofuels industry, and the Beneficiary’s impact in one or several of these activities on a company-wide scale has not been demonstrated. Further, the letters do not explain the extent to which her work product is part of a larger team effort with other data scientists employed by the Petitioner. As such, we conclude that the evidence does not establish that the Beneficiary meets 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 evidence includes letters from the Petitioner as well as recent paystubs for the Beneficiary which verify her annual salary of \$160,000. In addition, the Petitioner submitted salary data from three different United States government websites which included national and regional mean and high salaries for several occupations it claims approximate or are the same as the Beneficiary’s. In his decision, the Director found that the data submitted did not pertain to the Beneficiary’s occupation and did not show what top agricultural data scientists in the [redacted] area earned, and thus did not provide a proper basis of comparison to determine that her salary is high relative to others in her field. On appeal, the Petitioner argues that it provided relevant data from sources identified in USCIS policy guidance, and that the Beneficiary’s salary exceeds the 90th percentile for comparable occupations.

The Petitioner initially submitted evidence from the United States Department of Labor’s Foreign Labor Certification Data Center Online Wage Library (flcdatcenter.com) for the occupation of “Environmental Scientists and Specialists, Including Health” in the [redacted] area. That data indicated that the “prevailing” or average wage for Level IV workers, or those who are considered “fully competent,” was \$97,739 for the period ending June 2020, and that the mean wage for the position corresponded to the average Level III (for “experienced” workers) wage of \$82,139 per year.

In response to the Director’s RFE, the Petitioner submitted additional data from the United States Bureau of Labor Statistics Occupational Employment Statistics (OES) for this and other positions in the state of New York as follows:

Occupational Title	Annual Mean Wage
Data Scientist and Mathematical Science Occupations	\$125,170
Soil and Plant Scientist	\$80,380
Environmental Scientists and Specialists	\$84,080
Farmers, Ranchers and other Agricultural Managers	\$100,750

In addition, the Petitioner also provided occupation profiles from a third website, careeronestop.org, which included job descriptions and national annual salary ranges for the following positions:

- Environmental Scientists and Specialists, Including Health
- Soil and Plant Scientists
- Atmospheric and Space Scientists
- Climate Change Analysts
- Bioinformatics Scientists
- Statisticians
- Farm and Ranch Managers

We note that average salary information for those performing work in a related but distinct occupation with different responsibilities is not a proper basis for comparison. Rather, the Petitioner must submit documentary evidence of the earnings of those in the Beneficiary’s occupation performing similar work near the top level of the field. *See Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm’r 1994) (considering professional golfer’s earnings versus other PGA Tour golfers); *see also Grimson v. INS*, 934 F. Supp. 965, 968 (N.D. Ill. 1996) (considering NHL enforcer’s salary versus other NHL enforcers); *Muni v. INS*, 891 F. Supp. 440, 444-45 (N. D. Ill. 1995) (comparing salary of NHL defensive player to salary of other NHL defensemen).

Here, the Petitioner did not provide an occupation profile from the careeronestop.org website for the occupation of data scientists, despite providing the OES data for this occupation noted above. The description of this occupation⁵ provided in the profile states the following:

Develop and implement a set of techniques or analytics applications to transform raw data into meaningful information using data-oriented programming languages and visualization software. Apply data mining, data modeling, natural language processing, and machine learning to extract and analyze information from large structured and unstructured datasets. Visualize, interpret, and report data findings. May create dynamic data reports.

In comparing this job description and those listed above to the description of the Beneficiary’s agricultural data scientist position provided by the Petitioner, we conclude that this position most accurately matches her duties. Notably, the letter provided in response to the Director’s RFE explains that the Beneficiary “has developed state-of-the-art [redacted] platforms utilizing cutting-edge machine learning techniques” as well as data mined from several different sources. It goes on to state

⁵ Found at [https://www.careeronestop.org/Toolkit/Careers/Occupations/occupation-profile.aspx?persist=true&keyword=Data%20Scientists&location=\[redacted\]&ajax=0&onetcode=15205100](https://www.careeronestop.org/Toolkit/Careers/Occupations/occupation-profile.aspx?persist=true&keyword=Data%20Scientists&location=[redacted]&ajax=0&onetcode=15205100) and accessed on February 2, 2021.

that her “[redacted]” platform provides real-time “[redacted]” monitoring data...” that she then presents in research reports.

Further, although the occupation profiles submitted by the Petitioner include only national salary data, more accurate county data is available at careeronestop.org. This information indicates that for data scientists in the [redacted] area, the median wage is \$118,740, the 75th percentile wage is \$152,760, and the 90th percentile wage is \$192,240. Although the Beneficiary’s salary is therefore above average when compared to other data scientists employed in the [redacted] area, this data obtained from the same source as the evidence submitted by the Petitioner indicates that her salary is not high relative to those similarly situated scientists. Accordingly, we conclude that the Beneficiary does not meet this criterion.

B. O-1 Approval

We note that the record reflects that the Petitioner received O-1 status, a classification reserved for nonimmigrants of extraordinary ability. Although USCIS has approved at least one O-1 nonimmigrant visa petition filed on behalf of the Petitioner, the prior approval does not preclude USCIS from denying an immigrant visa petition which is adjudicated based on a different standard - statute, regulations, and case law. Many Form 1-140 immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *affd*, 905 F. 2d 41 (2d. Cir. 1990). Furthermore, our authority over the USCIS service centers, the office adjudicating the nonimmigrant visa petition, is comparable to the relationship between a court of appeals and a district court. Even if a service center director has approved a nonimmigrant petition on behalf of an individual, we are not bound to follow that finding in the adjudication of another immigration petition. *Louisiana Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, at *2 (E.D. La. 2000).

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 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.