



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

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

In Re: 20619060

Date: AUG. 09, 2022

Appeal of Nebraska Service Center Decision

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

The Petitioner, a neurosurgeon, 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 evidence requirement for this classification through evidence of either a one-time achievement or that he meets three of the alternative 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 is currently employed as a resident physician in neurosurgery at the University of [redacted] [redacted]. He obtained his medical degree in 2012 from the University of [redacted] in Brazil, is board certified by the Brazilian Society of Neurosurgery (SBN) and the Brazilian Academy of Neurosurgery (ABNe), and obtained a license as a physician and surgeon in [redacted] in 2020. The Petitioner states that he intends to continue to work as a neurosurgeon in the United States, as well as pursuing research and teaching goals.

A. Evidentiary Criteria

Because the Petitioner has not indicated or established that he has received a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). 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 his participation as a judge of the work of others and his authorship of scholarly articles, and after review we agree with those conclusions. On appeal, the Petitioner asserts that he also meets five additional evidentiary criteria, which will be discussed below.

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)

To meet this criterion, the evidence must show that any prizes or awards received by a petitioner were granted based upon excellence in the field of endeavor, and that they are recognized in the field at the national or international level. Here, the Petitioner submitted several certificates he earned, including four which were awarded by institutions he attended as part of his education and training. Letters from individuals associated with those institutions explain that candidates for those awards were limited to resident physicians and others within the respective institutions, and were based upon the Petitioner's performance as a resident physician. Such limitations on the candidates for those awards is a relevant factor in determining whether they were awarded for excellence in the field of endeavor. *See 6 USCIS Policy Manual F.2*, <https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-2>. In addition, the record does not include evidence showing that these four awards were recognized by the

field in general or others in the field outside of those institutions. As such, we agree with the Director that the evidence does not establish that these four awards were awarded for excellence in the field and are nationally or internationally recognized within the field of neurosurgery.

The Petitioner also asserts on appeal that he received another award from one of these institutions, which he refers to as an “Honor to Merit and Academic Excellence” award. However, the record does not include evidence from the awarding institution which verifies his receipt of this award.

The remaining award claimed by the Petitioner in support of this criterion is the [redacted] [redacted] 2018” award from ABNc. On appeal, the Petitioner refers to three letters submitted by experts in the field of neurosurgery in support of the national or international recognition of this award. We first note that only one of these individuals, [redacted] of the [redacted] [redacted] in Brazil, states that he is a member of ABNc, and he does not indicate that he has played any role in the awarding or administration of this award. In addition, despite his relationship with the awarding association, his letter does not provide any additional detail about the award than the other two letters. All three letters state only that the award is given to a neurosurgeon [redacted] [redacted] years of experience in the field, and is based upon contributions to the field over the past year. These statements are not supported by any rules, guidelines, or statements from an official of the ABNc. Further, the record does not include additional evidence beyond these letters to support the national or international recognition of this award in the field of neurosurgery. While we acknowledge the title of the award and its issuance by what appears to be one of two professional neurosurgery associations in Brazil, the record is insufficient to establish by a preponderance of the evidence that it is nationally or internationally recognized in the field.

For all of the reasons discussed above, we conclude that the Petitioner has not met 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 submitted evidence that he is a member of several professional associations, including ABNc and SBN, as well as the North American Skull Base Society (NASBS) and American Association of Neurological Surgeons. In his decision, the Director noted that associations with membership requirements such as employment in a certain occupation, a minimum level of education, training or experience, and paying annual dues do not require outstanding achievements of their members.

On appeal, the Petitioner refers to previously submitted evidence of the membership requirements of these associations. For example, he points to the membership requirements for full members of the ABNc,¹ which include practicing in the neurosurgery specialty, completing a residency, and submitting a curriculum vitae and recommendations from three current full members for review by the deliberative council. Similarly, NASBS requires its international members to have a doctorate

¹ Although the Petitioner refers to these as coming from the association's bylaws, the evidence appears to be simply a page on the ABNc's website.

degree, a qualification in the neurosurgery specialty, and to have engaged in practice with clinical experience and proficiency in a field related to skull base surgery. The application process requires a proposal from one voting member, approval by the Board of Directors and endorsement by a majority of voting members. All of the evidence submitted regarding the membership requirements of these associations show similar requirements, none of which the Petitioner has shown are unusual or go far beyond the minimum requirements for employment as a neurosurgeon.

The Petitioner asserts on appeal that the review process for each of these associations shows that they require outstanding achievements as judged by national or international experts. However, the materials regarding most of these associations do not include any specific criteria used by existing members in the voting process,² and the Petitioner does not suggest that qualities such as ethics and moral character, mentioned in some of the membership requirements, are considered to be outstanding among neurosurgeons. Further, there is no evidence in the record regarding the national or international recognition of each of the voting members for these associations.

The Petitioner also asserts that his membership in the neurosurgery residency program at the University of [] qualifies under this criteria, but provides no evidence that the selection process required outstanding achievements or was judged by nationally or internationally recognized experts.

Having reviewed the evidence submitted under this criterion, we agree with the Director and conclude that the Petitioner does not meet 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)

The record includes two articles, published on the websites jblittoral.com.br and revistasaudenews.com.br., both of which feature a photograph and information about the Petitioner and his work as a neurosurgeon. The *Saude News* article does not include the required author information, and appears to either have been written by the Petitioner or, as the Director suggested, is an advertisement for his practice. Since neither autobiographical materials nor marketing materials are generally considered to be about a petitioner, this evidence does not qualify under this criterion. See 6 USCIS Policy Manual F.2, Appendices.

Turning to the *JB Littoral* article, it does have the required author, date and title information, but only the opening paragraph is in English, with the actual interview of the Petitioner in Portuguese. This material does not meet the requirements of 8 C.F.R. § 103.2(b)(3) regarding translations of documents in a foreign language, and therefore cannot be considered.

² We note that a letter was submitted from the President of ABNc which states that a review panel of three current members considers factors such as “a prominent and distinguished career in the field, with significant contributions to the field of neurosurgery, and great potential for future contributions” and “substantially above average aptitude found in the field of neurosurgery.” However, we note that none of these factors are reflected on the ABNc’s webpage, and that despite his assertion the Petitioner did not submit the association’s bylaws.

Also, while the Petitioner asserts that both of these websites are professional publications, the evidence does not support this conclusion. Considering the evidence in support of the *Saude News* article, while the website's own description states that it focuses on health, suggesting that it may be a professional publication as the Petitioner asserts, this includes a broader scope including "well-being, sport, citizenship, social projects, education, tourism, technological potentials in favor of public health, among others." It also indicates that physical copies are distributed to medical clinics, but also "gyms, shopping malls, beauty centers, beauty institutes, prominent restaurants." This evidence does not show that the magazine or its website is produced by professionals in the medical or neurosurgical fields, or that its intended audience is primarily medical professionals. In addition, the "domain review" evidence pertaining to the *JB Littoral* website provides no information about its focus or intended audience, and thus lends no support for the Petitioner's assertion that it is a professional publication. Therefore, we conclude that neither of these publications qualify as professional.

Given the above, the Petitioner has not established that he 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 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. *See Visinscaia*, 4 F. Supp. 3d at 134-35.

On appeal, the Petitioner reiterates many of the same claims he made in his initial submission and in response to the Director's request for evidence (RFE), in several instances using identical language. He focuses on a handful of papers which he co-authored which were published in medical journals, and refers to reference letters which discuss the contributions made by the research that was published. We note that many of the authors of these letters indicate that they have never worked with the Petitioner and do not personally know him.

One of the two articles co-authored by the Petitioner which were published in the *Journal of Neurointerventional Surgery* (JNIS) in 2019 concerns research on use of [redacted] in cerebrovascular surgery. Several of the reference letters initially submitted make brief statements that this research was the first to validate the use of [redacted] in such surgeries.³ For example, [redacted] of the University of [redacted] wrote that this research "has been fundamental as the first use of [redacted] in neurointerventional treatments." Also, [redacted] at the [redacted] University of [redacted] states this research "majorly impacted the field with a new groundbreaking use of [redacted] as adjuvant in interventional treatment of cerebrovascular conditions." While both of these letters describe this research as an important contribution to the field, neither they nor other letters initially submitted explain how or why the use of [redacted] in these procedures was of major significance to the field.

³ All reference letters in the record have been reviewed, including those not specifically mentioned in this decision.

In his response to the Director's RFE, the Petitioner submitted additional letters, including a second letter from [redacted]. [redacted] notes that this research was presented at the 2019 International Stroke Conference, and describes the benefits of using [redacted] in procedures for treating stroke. He also states that this has "changed the game for complex cerebrovascular cases," and has "improved the care for hundreds of thousands nationwide." However, another letter submitted with the RFE response, written by [redacted] indicates that this research provides the field with "the possibility of using [redacted] in an effective and much safer way" than [redacted] and "will impact the field in an invaluable now and in many years to come." In order to meet this criterion, the Petitioner must show that he has already made a contribution of major significance, not that his contribution has the potential to be of major significance in the future. None of the letters submitted indicate that the use of [redacted] has been widely adopted or become standard practice in the field of neurosurgery, or even that its use has been adopted at the institutions where the letter writers practice. Further, we note that the Petitioner and his co-authors concluded that their research "suggest(s) that [redacted] is a promising alternative..." and that "further studies with larger samples are required." While we acknowledge that medical research is collaborative and that researchers build upon the work of others, this evidence does not establish that the preliminary research conducted by the Petitioner has advanced the field of neurosurgery to the extent that it is of major significance.

The Petitioner also asserts that other original contributions he has made have been of major significance to the field of neurosurgery. Two published papers he co-authored in 2019, in *JNIS* and *World Neurosurgery*, focused on treatments for cerebral [redacted]. As with the [redacted] research discussed above, the Petitioner focuses on statements in the reference letters in the record. [redacted] who was one of his co-authors on the *World Neurosurgery* article, writes in his first letter that that review article "has set new parameters for current basis of [redacted] treatment allowing new devices to be compared more easily..." noting that this "unquestionably helps healthcare providers in deciding which technology will be helpful or not." He expands upon the *JNIS* article in his second letter, stating that this paper showed that the [redacted] technique is "an important, safe and equivalent alternative to [redacted]". [redacted] indicates that the techniques' importance lies in it being a cheaper alternative, but mentions this cost savings in prospective terms only.

[redacted] also discusses the impact of the *World Neurosurgery* article in his letter, which he states provides patients with hard data to compare the different types of treatments available for treating [redacted]. He goes on to state that the paper "will be long used whenever new devices and modalities arise" since it will serve as a comparative baseline. As we noted above, in order to meet this criterion the Petitioner must show that his contributions have already been of major significance. Here, he has not met that burden, since the reference letters he relies upon offer projections of future impact to the field.

The Petitioner also refers to the number of citations to all of his published research on appeal, which according to his profile in Google Scholar numbered 80 with his initial filing and 111 at the time of his RFE response. But although the total number of citations to his work is one factor that would be appropriate to consider as a measure of his acclaim in a final merits determination, it is less relevant when focusing on specific contributions to his field. When looking at the individual papers discussed above, the evidence shows that two of the three were his most cited works, but this does not reflect their overall impact in the field of neurosurgery. The Petitioner correctly notes that the former

Adjudicator's Field Manual, now the USCIS Policy Manual, states that peer-reviewed articles that have "provoked widespread commentary" or have "entries (particularly a goodly number) in a citation index that cite the Person's work as authoritative in the field" are helpful in determining the significance of the person's contributions to their field. But it remains for a petitioner to submit evidence demonstrating that a certain total number or rate of citations constitutes a "goodly number" in a certain field, and that the work is cited as authoritative. In this case, the record lacks such documentary evidence. Some of the reference letters, such as the one submitted by [redacted] [redacted] state that achieving a total number of citations in the field of neurosurgery similar to the Petitioner's can take several decades, but these statements are not supported by documentary evidence, and are not relevant in determining whether his original contributions have been of major significance.

Upon reviewing the evidence described above, including the remaining reference letters, we conclude that it does not establish that the Petitioner 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 qualify under this criterion, a petitioner must show that they played a leading or critical role for an organization or establishment, and that that organization or establishment has a distinguished reputation. When evaluating whether a role is leading, we look at whether the evidence establishes that the person is or was a leader within the organization, or a department or division thereof. A title, with appropriate matching duties, can help to establish that a role is or was leading. For a critical role, we look at whether the evidence establishes that the person has contributed in a way that is of significant importance to the outcome of the organization or establishment's activities or those of a division or department of the organization or establishment. *See 6 USCIS Policy Manual F.2, Appendices.*

The Director determined in his decision that the reference letters in the record were insufficient to establish that the Petitioner played a leading or critical role for [redacted] or for the University of [redacted]. On appeal, the Petitioner focuses on what he asserts were leading roles for [redacted] and the [redacted].

At [redacted] the evidence indicates that the Petitioner served as Leading Research Fellow from July to December of 2018, which included "guiding and leading the research team and fellows." [redacted] [redacted] Director of the [redacted] states that during this six-month period the Petitioner "was able to successfully coordinate and integrate the research team with the clinical team." In another letter, he went into further detail, explaining that the Petitioner "implemented key meetings and tasks for each team member" and that he had the "final decision" regarding projects, schedules and research decisions. However, the letters do not explain the research team's position within [redacted] the organization for which the Petitioner asserts he played a leading role, nor does the record include an organizational chart or similar evidence which would place the Leading Research Fellow position within the organization's overall hierarchy. While the letters show that the Petitioner played a leading role for [redacted] research team, they do not show that it was leading for [redacted].

The record also indicates that at [redacted] the Petitioner served as the Chief Resident of Neurosurgery during the 2017 academic year. [redacted] Director and CEO of the [redacted] explains that

the role typically includes organizational and administrative duties, but that the Petitioner also completed several projects during this time, such as developing and implementing a visiting physician referral system and developing a surgical training lab for residents at [redacted]. As with the above evidence, this evidence does not explain the chief resident position in terms of its place in the overall hierarchy of [redacted] and thus does not demonstrate that it was a leading role for the institute overall, which is the basis for the Petitioner's claim.

In addition, the evidence concerning each of these organizations does not establish that they have a distinguished reputation. The materials concerning [redacted] include only a short paragraph from the [redacted] website stating that [redacted] and a listing of accreditations for [redacted]. However, this self-promotional statement is not supported by documentary evidence of [redacted] reputation from other organizations in the field of neurosurgery, and the evidence does not sufficiently explain the relationship between [redacted] accreditations and [redacted] reputation in neurosurgery.

Regarding [redacted] reputation, the Petitioner submitted what appears to be a press release posted on a Brazilian website which states that the institute was awarded "Best of the Year" in the health category by a Brazilian newspaper in the state of [redacted]. This press release indicates that the award is voted on by the newspapers journalists, and is intended "to show and value the good personal and business initiatives developed in [redacted]. It therefore does not show that [redacted] has a distinguished reputation amongst similar institutions or in the overall field of neurosurgery.

For all of the above reasons, the Petitioner has not established that he 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 his work is indicative of the required sustained national or international acclaim or that it is consistent with a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate that the Petitioner has garnered national or international acclaim in the field, and that 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 his eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.