



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

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

In Re: 21218536

Date: AUG. 22, 2022

Appeal of Nebraska Service Center Decision

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

The Petitioner, a transplant surgeon, seeks classification as an individual 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 had satisfied at least three of ten initial evidentiary criteria, as required. The matter is now before us on appeal.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

## I. LAW

Section 203(b)(1)(A) of the Act makes immigrant visas available to individuals with 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; who seek to enter the United States to continue work in the area of extraordinary ability; and whose 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 the initial evidence requirements through either a one-time achievement or meeting three lesser criteria, 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 studied medicine at the [redacted] Institute of Medical Sciences from 2003 to 2012, and his training included fellowships at the University of [redacted] from 2012 to 2014 and the University of [redacted] from 2014 to 2016. The Petitioner worked as a clinical instructor at [redacted] University from 2016 to 2018, and as an assistant professor at University Hospitals in [redacted] from 2018 to 2020. Since 2020, the Petitioner has been an assistant professor at the University of [redacted] Medical Center [redacted] as an H-1B nonimmigrant in a specialty occupation.<sup>1</sup>

### A. Evidentiary Criteria

Because the Petitioner has not indicated or shown that he 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 Petitioner claims to have satisfied six of these criteria, summarized below:

- (ii), Membership in associations that require outstanding achievements;
- (iv), Participation as a judge of the work of others;
- (v), Original contributions of major significance;
- (vi), Authorship of scholarly articles;
- (viii), Leading or critical role for distinguished organizations or establishments; and
- (ix), High remuneration for services.

The Director concluded that the Petitioner met two of the criteria, pertaining to judging the work of others and authorship of scholarly articles. On appeal, the Petitioner asserts that he also meets the other four claimed criteria.

Upon review of the record, we agree with the Director that the Petitioner has satisfied only the two criteria granted previously. We will discuss the other claimed criteria below.

*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).

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<sup>1</sup> We note that the Petitioner previously filed another immigrant petition on his own behalf, with receipt number [redacted] [redacted] on September 7, 2017. Under that petition, the Petitioner sought a different classification, with different eligibility requirements, as a member of the professions holding an advanced degree, with a national interest waiver of the job offer requirement under section 203(b)(2)(B)(ii). That petition was approved on April 13, 2018, and the approval remains in effect.

The Petitioner asserts that he satisfies this criterion as a fellow of the American College of Surgeons (ACS), as a member of Alpha Omega Alpha Honor Medical Society (ΑΩΑ), and as a member of Sigma Xi, the Scientific Research Honor Society (ΣΞ).

A petitioner must meet all eligibility requirements at the time of filing the petition. 8 C.F.R. § 103.2(b)(1). His acceptance letters from ΑΩΑ and ΣΞ are both dated November 2021, two months after the filing date in September 2021. Furthermore, the record does not show that these memberships meet the regulatory requirements. The petitioner “must show that membership in the associations is based on the person being judged by recognized national or international experts as having attained outstanding achievements in the field for which classification is sought.” 6 *USCIS Policy Manual* F.2 appendix, <https://www.uscis.gov/policymanual>.

Both organizations admit students into membership, and the submitted materials do not show that recognized national or international experts judge the achievements of prospective members. ΣΞ membership is available to researchers who show “primary authorship of two papers,” and “[a]n earned doctoral degree may be substituted for one paper.” ΑΩΑ elects members at the local chapter level. Neither admission standard reflects that it would meet the criterion.

The Petitioner joined the ACS as a fellow (synonymous, here, with “member”) in 2020, before he filed the petition. The record includes a printout from the ACS’s website, indicating that fellows are chosen based on “rigorous evaluation” of their “education and training professional qualifications, surgical competence, and ethical conduct.” These factors do not rise to the level of outstanding achievements. The ACS’s bylaws, also in the record, describe a higher level of membership, “Honorary Fellowship,” which is limited to “individuals who (a) possess an international reputation in the field of surgery or medicine, or (b) have rendered distinguished humanitarian services.” The Petitioner’s membership documents indicate that he is a fellow, not an honorary fellow.

The Petitioner has not established that the named associations require outstanding achievements, as judged by nationally or internationally recognized experts, for the level of membership that the Petitioner holds in those associations. Therefore, the Petitioner does not meet 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).

The Petitioner states that his “innovative research . . . has led to important advances in [his] vital surgical subspecialty and has improved access to transplant surgeries for patients,” and “impacted the way physicians approach the use of clinical and surgical advancements . . . in their efforts to responsibly treat patients suffering from chronic and acute conditions.”

The *USCIS Policy Manual* provides guidelines for evaluating evidence and information relating to the significance of an individual’s contributions:

[P]eer-reviewed presentations at academic symposia or 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 that cite

the person's work as authoritative in the field, may be probative of the significance of the person's contributions to the field of endeavor.

. . . [E]xperts in the field may provide [probative analysis] in opinion letters regarding the significance of the person's contributions in order to assist in giving an assessment of the person's original contributions of major significance. That said, not all expert letters provide such analysis. Letters that specifically articulate how the person's contributions are of major significance to the field and their impact on subsequent work add value. Letters that lack specifics and simply use hyperbolic language do not add value and are not considered to be probative evidence that may form the basis for meeting this criterion.

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

The Petitioner did not provide citation figures for his published work. Instead, he has submitted Altmetric profiles for five of his articles. These profiles include "Attention Scores" that rank the articles against "all research outputs," "outputs of the same age," and "outputs of the same age and source." The profiles do not appear to rank the response to the Petitioner's work in relation to other articles in the same field of research. Therefore, the Petitioner has not established that these profiles show that his original contributions have major significance in the field. If the Petitioner contends that citations are not a reliable indicator of that significance, then the burden remains on him to establish significance and the major significance of his contributions by other means.

Screen captures show that various physicians, organizations, and publications have tweeted links to articles by the Petitioner, but the Petitioner has not shown that only contributions of major significance are mentioned on social media in this way.

The Petitioner also submitted copies of brief, similarly-worded articles from MedIndia.net, News-Medical.net, and MedicalExpress.com, reporting the publication of a scholarly article of which the Petitioner was one of nine co-authors. The articles all derive from a press release from the journal's publisher, and quote the lead author of the article. The Petitioner's name is not mentioned. As with the tweets discussed above, the text of the articles does not indicate that the information reported is of major significance, and the Petitioner has not shown that this type of coverage is limited to contributions of major significance.

The Petitioner relies primarily on letters from others in his field, who discuss articles that the Petitioner wrote or co-wrote. To varying degrees, the descriptions of the Petitioner's articles essentially paraphrase the abstracts of those articles. For example, the abstract for [REDACTED] published in *Clinical Transplantation*, reads in part:

Short- and long-term outcomes were compared between contemporaneous [REDACTED] and [REDACTED] donors. . . . Baseline estimated [REDACTED] was lower in [REDACTED]. . . . Intraoperative and postoperative complications were similar, except a higher prevalence of <30 day [REDACTED] and longer postoperative length of stay. . . . After >20 years post-DN, systolic blood pressure was significantly higher among [REDACTED] and [REDACTED] was diagnosed earlier. . . . After donation, [REDACTED] was

significantly lower for [redacted] but slope of [redacted] and rates of [redacted] [redacted] were not significantly different >20 years post-DN. Thus, [redacted] donation among carefully selected [redacted] poses minimal perioperative risks and no added risk of long-term [redacted]

A letter from the director of the Center for [redacted] at the [redacted] Clinic reads, in part:

[The Petitioner] and his co-researchers examine the short- and long-term outcomes of contemporaneous [redacted] [The Petitioner] and his team found a similar incidence of intraoperative and postoperative complications in both groups but did discover an increase in hospital stay and incidence of [redacted] in the donors [redacted] years of age. They also uncovered a higher incidence of hypertension in [redacted] donors and found that [redacted] donors became hypertensive earlier after donation. The study also found that the [redacted] was also lower in the [redacted] donor cohort, but there was no significant difference in the rates of progression to [redacted] [redacted] after following these donors for over 20 years after donation. This study was particularly unique and noteworthy in the transplant community because it followed the donor cohorts for over 20 years, allowing researchers and surgeons to assess the long-term impacts of [redacted] donation. Based on these observations, [the Petitioner] concluded that with the increasing demand for [redacted] transplants, that if carefully selected, donors [redacted] [redacted] years of age post minimal perioperative risks and no added risk of [redacted] disease, thus allowing [redacted] donors to serve as viable [redacted] donors.

The above description repeats the information from the abstract, using less technical language, but does not explain why the article is of major significance in the field. The study may have been the first, or among the first, to follow this specific donor cohort over a long period of time, but the Petitioner has not shown how this information has affected his field. As noted above, “Letters that specifically articulate how the person’s contributions are of major significance to the field and their impact on subsequent work add value.” 6 USCIS Policy Manual, supra, at F.2 appendix. The Petitioner asserts that his article is significant because it “increas[es] available organs by expanding the [redacted] criteria of donors,” but he submits no evidence that any such expansion has actually occurred, which might establish the major significance of the contribution. Rather, his article indicates that individuals [redacted] have been donating [redacted] for more than 20 years and that [redacted] have become more common.” The Petitioner does not show that the study is, itself, an original contribution of major significance.

Furthermore, similarities in wording are consistent with common authorship of the letters. Describing another *Clinical Transplantation* article, the [redacted] Clinic official states:

[redacted] are rare complications that are difficult to diagnose and manage. Patients with these complications can bleed to death if not intervened in a timely manner. . . . [The Petitioner] discusses how the management of such complications has changed over different eras from primarily [redacted] [redacted] now by [redacted] or [redacted] lesions. Based on his experience, he also suggests that [redacted] the lesion is better than [redacted] in most cases because of the higher risk of [redacted]

A letter from the division chief of transplant surgery at the University of [redacted] Medical Center includes a very similar passage:

[redacted] and [redacted] are rare complications that are difficult to diagnose and manage. Patients with these complications can bleed to death if not intervened in a timely manner. In this case series, [the Petitioner] discusses how to manage these complications, how the techniques used have changed over different eras from primarily [redacted] management now by [redacted] [redacted] lesions. [The Petitioner], through actual clinical experience, also suggests that [redacted] is better than [redacted] in most cases because of the higher risk of [redacted]

The first three sentences quoted above also appear in a letter from a professor at the University of [redacted]<sup>2</sup> Very similar wording also appears in a letter from a professor at [redacted] University:

These are rare complications that are difficult to diagnose and manage, and patients with these complications can bleed to death if intervention is not provided in a timely manner. In this study, [the Petitioner] also discusses how the management of such complications has changed over different eras from primarily [redacted] management by [redacted] lesions. From experience, [the Petitioner] also provides clinical advice, suggesting that [redacted] is better than [redacted] in most cases because of the higher risk of [redacted]

The letters describe the Petitioner’s published work, but they do not establish its major significance in the field. Sometimes the letters summarize the publications without comment, and at other times there are brief comments using phrases such as “of particular importance,” “of great interest,” and “extremely educational and useful,” and such assessments are insufficient to establish the importance of the contribution. Some letters attest that the Petitioner’s work has had a significant impact on the field, but offer no specific corroboration for such claims. With little or no further elaboration, such statements do not suffice to establish that the Petitioner’s original contributions have been not only useful, helpful, or interesting, but of major significance as the criterion requires.

A number of the letters describing the Petitioner’s published work also do not demonstrate the original nature of the Petitioner’s contributions. For example, a letter indicates that one of the Petitioner’s articles “supported the proposed [redacted] policy of requiring at least six weeks of [redacted] dysfunction for a candidate to be qualified for a simultaneous [redacted] transplant.” Based on this statement, it appears that the policy had already been proposed. It is entirely proper for such recommendations to rely on empirical evidence gathered from studies such as the Petitioner’s, but it appears that the original, significant contribution lies in the proposal itself rather than in one of an unknown number of studies supporting that proposal. For another example, the Petitioner has transplanted [redacted] from [redacted]

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<sup>2</sup> The similar, at times identical, language in the submitted letters undermines their probative value, because the shared language “suggests that the letters were all prepared by the same person and calls into question the persuasive value of the letters’ content.” *Hamal v. U.S. Dep’t of Homeland Security*, No. 19-2534, slip op. at 8, n.3 (D.D.C. June 8, 2021).

[redacted] donors into [redacted] recipients. Letters in the record state that this practice increases the supply of donor [redacted] but the record does not show that the practice began with the Petitioner; rather, he was the first surgeon to employ the practice in [redacted]. This, however, does not demonstrate the original nature, or significance of the practice to the field as a whole.

For the above reasons, the Petitioner has not established that his original contributions have major significance in the field.

*Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.* 8 C.F.R. § 204.5(h)(3)(viii).

The Petitioner initially claimed to satisfy this criterion through his roles at [redacted] and the American Society of Transplant Surgeons (ASTS). The Director determined that the Petitioner had not shown his roles with those organizations to be leading or critical. On appeal, the Petitioner only addresses his role at [redacted]. We consider his earlier claims regarding the ASTS to be abandoned.<sup>3</sup>

The chief medical officer of [redacted] stated that the Petitioner has a leading role “as the Director of [redacted] Transplantation.” The petitioner must establish that “the department or division for which the person holds or held a leading or critical role, has a distinguished reputation.” 6 USCIS Policy Manual, *supra*, at F.2 appendix. The Petitioner does not show that [redacted] [redacted] transplantation program has a distinguished reputation in its own right as required.

The chief medical officer also described the Petitioner’s duties in “patient care,” “teaching,” and “research.” These responsibilities appear to be routine for medical school faculty members, although specific duties will vary from person to person, and do not demonstrate a leading or critical role.

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. 6 USCIS Policy Manual, *supra*, at F.2 appendix. The Petitioner has not established that his work at [redacted] meets this high standard.

In response to a request for evidence, the Petitioner submitted a letter from the chairman of [redacted] Department of Urology, indicating that the Petitioner is a “representative of the Faculty Senate where he serves diligently on our COMLS Faculty Council.” The letter is dated two months after the petition’s filing date and does not indicate when the Petitioner began serving in this capacity. The Petitioner’s own *curriculum vitae*, submitted at the time of filing, did not list this position. Therefore, there is no evidence that the Petitioner served on the Faculty Senate at the time he filed the petition, as required by 8 C.F.R. § 103.2(b)(1). As a result, we need not consider the question of whether that appointment constitutes either a leading or critical role.

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<sup>3</sup> See *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012) (stating that when a filing party fails to appeal an issue addressed in an adverse decision, that issue is waived). See also *Sepulveda v. U.S. Att’y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005), citing *United States v. Cunningham*, 161 F.3d 1343, 1344 (11th Cir. 1998); *Hristov v. Roark*, No. 09–CV–27312011, 2011 WL 4711885 at \*1, \*9 (E.D.N.Y. Sept. 30, 2011) (plaintiff’s claims were abandoned as he failed to raise them on appeal to the AAO).

The Petitioner has not established that he has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.

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

The Petitioner states that his \$350,000 annual salary from [redacted] meets this criteria. In support of this assertion, the Petitioner cited data from the U.S. Department of Labor. The data relates to “Surgeons, Except Ophthalmologists” nationally, in Ohio, and in the [redacted] area, both generally and in the “Education Industry.” Average yearly figures range from \$148,158 to \$277,510.

The Director requested salary evidence specific to transplant surgeons, the Petitioner’s claimed field. In response, the Petitioner submitted third-party survey data revealing a number of disparate salary ranges. Salary.com indicates the salary range for transplant surgeons in [redacted] is \$212,731 to \$303,446. Ziprecruiter.com provides a much wider range for transplant surgeons in [redacted] from \$24,266 to \$409,473. Ziprecruiter also shows significant variations from city to city in [redacted], and from one specialty to another. Therefore, these divergent and inconsistent figures would not fully establish salary in relation to others in the field.

The Petitioner submitted salary data for surgeons at the University of [redacted] and the University of [redacted].<sup>4</sup> The Petitioner does not establish that these figures are representative of the field. Furthermore, the data from [redacted] shows that the individuals are paid separately for different responsibilities. One surgeon’s total compensation of \$350,000 per year includes \$50,000 as a section chief, \$60,000 as a professor, and \$105,000 as a physician surgeon; the submitted table does not account for the remaining \$135,000 per year. The Petitioner does not show whether his own salary is divided in this manner. If the Petitioner’s non-surgical responsibilities, such as teaching duties, augment his income, then it would be more appropriate either to compare the Petitioner’s total compensation with that of other transplant surgeons with comparable duties, or to consider only that portion of his salary that pertains directly to his work as a surgeon.

The evidence submitted by the Petitioner does not establish that he has commanded a high salary or other significantly high remuneration for services in relation to others in his field of transplant surgery.

### 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 lesser 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 conclusion 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. U.S. Citizenship and Immigration Services has long held that even athletes performing at the major league level do not

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<sup>4</sup> Even if comparison within individual institutions were an appropriate measure, the Petitioner does not submit such data for other transplant surgeons at [redacted] which might provide a useful comparison.



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 recognition of his work is indicative of the required sustained national or international acclaim or demonstrates 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 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). The Petitioner has satisfied the letter of two regulatory criteria, but the nature of these criteria is such that many researchers can satisfy them even though they have not earned sustained national or international acclaim. Publication of research results, and peer-reviewing the research of others, are common factors in academia, rather than necessarily establishing sustained national or international acclaim at the top of the field. The Petitioner has not shown that his work demonstrates sustained national or international acclaim.

The Petitioner has not demonstrated eligibility as an individual of extraordinary ability. We will dismiss the appeal for the above stated reasons.

**ORDER:** The appeal is dismissed.