



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

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

In Re: 21635112

Date: AUG. 25, 2022

Appeal of Nebraska Service Center Decision

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

The Petitioner, a rehabilitation services provider, seeks to employ the Beneficiary as a speech language pathologist, and to classify her 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 a beneficiary's 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 it 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. The regulation at 8 C.F.R. § 204.5(h)(4) allows a petitioner to submit comparable evidence if it is able to demonstrate that the standards at 8 C.F.R. § 204.5(h)(3)(i)–(x) do not readily apply to the individual's occupation.

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 Beneficiary earned a doctorate in speech language pathology from the University [redacted] India, in 2013. From 2016 to 2020, the Beneficiary served on the faculty of [redacted] Institute of Speech and Hearing [redacted] affiliated with [redacted] University in [redacted] India. The Beneficiary entered the United States in January 2020 to work for [redacted] in H-1B nonimmigrant status. In August 2020, still in H-1B status, she began working for the Petitioner as a speech-language pathologist contracted to public schools in California – first at [redacted] Elementary School and then at the [redacted] School District.

Because the Petitioner has not indicated or shown that the Beneficiary received a major, internationally recognized award, it must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x). The Petitioner initially claimed to have satisfied seven of these criteria, summarized below:

- (i), Lesser nationally or internationally recognized prizes or awards;
- (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;
- (vii), Display at artistic exhibitions or showcases;
- (viii), Leading or critical role for distinguished organizations or establishments;

The Director concluded that the Petitioner met two of the criteria, relating to participation as a judge and authorship of scholarly articles. On appeal, the Petitioner asserts that it has also submitted evidence to meet the criteria relating to prizes; membership in associations; original contributions; and leading or critical roles. The Petitioner does not contest the Director’s conclusions regarding display at artistic exhibitions, and therefore we consider that issue to be abandoned.¹

Upon review of the record, we agree with the Director that the Petitioner has satisfied the criteria related to judging (through the Beneficiary’s peer review activity) and authorship of scholarly articles. We will discuss the other claimed criteria below.

¹ *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).

First, however, we note that the Petitioner's appeal includes some new material, chief among them being an "expert evaluation letter" from a speech language pathologist on the faculty of [redacted] University. If this and other materials had appeared to be likely to affect the outcome of the appeal, we would have remanded the case for the Director to consider these new materials. But the letter is essentially a synopsis of the existing evidence of record, with the summary conclusion that asserts such evidence is sufficient to establish eligibility. As explained below, we do not agree with this conclusion.

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. 8 C.F.R. § 204.5(h)(3)(i).

The USCIS Policy Manual states:

Relevant considerations regarding whether the basis for granting the prizes or awards was excellence in the field include, but are not limited to:

- The criteria used to grant the awards or prizes;
- The national or international significance of the awards or prizes in the field; and
- The number of awardees or prize recipients, as well as any limitations on competitors (an award limited to competitors from a single institution, for example, may have little national or international significance).

6 USCIS Policy Manual F.2 appendix, <https://www.uscis.gov/policymanual>.

The Petitioner initially claimed research grants and a "Certificate of Clinical Competence" under this criterion. The Petitioner does not contest the Director's conclusion that these attainments are not prizes or awards.

On appeal, the Petitioner claims only one qualifying award. The Beneficiary received the [redacted] Award for [redacted] at a 2007 conference of the Indian Speech and Hearing Association (ISHA). The Director concluded that eligibility for the award was limited to conference participants.

The Petitioner asserts on appeal that "the [redacted] Award is a national award," which "can be given to any national or international professional in the entire speech-language and hearing field." The key requirement, however, is national or international recognition, not national *availability*. In its appellate brief, the Petitioner describes ISHA and the process by which that organization selects the winning paper, but neither of these factors establishes that the [redacted] Award is nationally or internationally recognized. For example, the Petitioner asserts that papers presented at the conference are selected from a larger number of candidate submissions, but this appears to be a regular practice of academic conferences, rather than an indication that participants seek consideration for a best paper award.

In response to a request for evidence, the Petitioner submitted a newly-written letter from an ISHA official, who referred to the [redacted] Award as "prestigious" but did not elaborate or provide corroborating evidence.

The Petitioner has not submitted sufficient evidence to establish the national or international recognition of the [redacted] Award.

The Petitioner has not established that the Beneficiary meets 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 asserts that the Beneficiary satisfies this criterion because she is a member of ISHA and the American Speech-Language-Hearing Association (ASHA).

ISHA governing documents in the record indicate that the qualifications for life membership are payment of a membership fee and “an Under-Graduate or Post-Graduate [degree] in Speech-Language.” Neither of these requirements amounts to an outstanding achievement in the field as required by the regulation, and the Petitioner has not shown that ISHA relies on recognized national or international experts to determine whether or not a prospective member meets membership requirements.

Regarding her ASHA membership, the Petitioner asserts that the Beneficiary holds a higher level of membership limited to individuals who hold a Certificate of Clinical Compliance. The Petitioner asserts that this certification entailed a credential evaluation, completing a 36-week clinical fellowship, and passing a Praxis exam. The Petitioner has not shown that any of these steps are outstanding achievements as judged by recognized national or international experts.

The Petitioner has not established that the Beneficiary 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).

The Director concluded that, while the Petitioner has documented the Beneficiary's original contributions, the Petitioner has not established the major significance of those contributions.

On appeal, the Petitioner states:

Research in the field of speech-language pathology is aimed to promote the investigation of speech-language and hearing disorders, foster improvement of therapeutic procedures for such disorders, and to stimulate the exchange of information among persons engaged in and disseminating such information. Therefore, the Beneficiary's expansive research in and of itself should be automatically considered as a major contribution to the field.

The stated conclusion does not follow from the premise, and does not explain why speech-language pathology research “should automatically be considered as a major contribution to the field” of speech-language pathology. The Petitioner must establish the significance of the Beneficiary's contributions, rather than the intrinsic importance of the overall field.

Publication of scholarly articles satisfies a separate criterion, at 8 C.F.R. § 204.5(h)(3)(vi); in order to satisfy this additional criterion, the Petitioner must establish the major significance of the Beneficiary's contributions. Publication and presentation can be indicators of originality, but not of major significance without additional evidence to establish that factor. Peer-reviewed "presentations or 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." 6 USCIS Policy Manual, *supra*, at F.2 appendix.

A Google Scholar printout lists 12 articles and papers by the Beneficiary. The printout shows that one of those articles has been cited three times since its publication in 2016. Two other articles, published in 2009 and 2012 respectively, have each been cited once. The Petitioner has not established that this total is a "goodly number" of citations in her field, or that the citations occurred in a context that demonstrates major significance.

The Petitioner asserts that the "citations indicate that [the Beneficiary's] research . . . is being used, considered and implemented by other researchers in the field." The standard is not whether the Beneficiary's contributions are productive and useful, but whether they have major significance.

On appeal, the Petitioner emphasizes two specific projects. The title of the first is [redacted] [redacted]. The Petitioner asserts that this project led the Beneficiary to develop a "new test/scale for the assessment of speech and language development in [redacted] . . . [which] is now routinely used for clinical assessment and progress monitoring across different training institutes in India." The Petitioner, however, documents its use at only two institutions: [redacted] where the Beneficiary was an associate professor at the time she developed the test; and the All-India Institute for Speech and Hearing, which provided the grant funding for the underlying research. A letter from [redacted] explains how the test is useful, but does not establish its major significance. The same letter indicates that other existing "tests and scales are used routinely" in the field, with no explanation as to how this particular test is of major significance.

The Petitioner also asserts that the Beneficiary "developed an [redacted] software for rehabilitation of language in the [redacted] language," which "can be used in children with delayed speech and language with poor vocabulary" and "adult language disorders such as Aphasia who exhibit word finding difficulties." Both the software and the test described above are specifically for use in the [redacted] language, which the Beneficiary describes as a "regional language of [redacted] India." This appears to limit the impact of the Beneficiary's projects to the [redacted] region; the Petitioner has not met its burden of proof by explaining why the test or the software are of major significance throughout the field.

The Petitioner has not established that the Beneficiary 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).

For a critical role, we first 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. A supporting role may be

considered “critical” if the person’s performance in the role is (or was) important in that way. It is not the title of the person’s role, but rather the person’s performance in the role that determines whether the role is (or was) critical. 6 USCIS Policy Manual, *supra*, at F.2 appendix. Further below, we discuss the second element of the organization’s distinguished reputation.

The Petitioner asserts that the Beneficiary performed in a critical role at [redacted] first as an associate professor and then as a professor and principal. The Petitioner states that the Beneficiary “conducted theoretical and clinical classes” and “served as a chairperson for the board of examiners for undergraduate and postgraduate programs at [redacted] University.” The Director concluded that the Petitioner had not shown how the Beneficiary’s roles have been critical or “more valuable than other colleagues at her places of employment.” As a result, the Director did not address the question of whether [redacted] has a distinguished reputation.

The record contains letters from the chairman of [redacted], asserting that the Beneficiary “played a critical role in the growth and development of the institute” and served for two years “as the Chairperson for the Board of Examinations . . . for undergraduate and postgraduate courses in the field of speech and hearing”

The submitted information indicates that the Beneficiary’s role at [redacted] went beyond the typical responsibilities of a faculty member, but the information describes limited, specified functions that the Petitioner has not shown to be of “significant importance” to the outcome of [redacted] activities.

Furthermore, the Petitioner has not established that [redacted] has a distinguished reputation, with “distinguished” defined as “marked by eminence, distinction, or excellence or befitting an eminent person.” 6 USCIS Policy Manual, *supra*, at F.2 appendix.

The chairperson’s description of [redacted] as “a premier Institute in India” does not suffice in this regard. The chairperson indicated that [redacted] is “approved by the Rehabilitation Council of India (RCI) to run Undergraduate and Postgraduate programs,” but such approval is effectively permission to operate, rather than evidence of a distinguished reputation. The RCI Certificates of Approval in the record appear to designate the approval as provisional; they advise that the approvals will be canceled unless certain “shortcomings” are remedied. The Petitioner did not submit copies of the portions of the certificates that list those shortcomings, or evidence that they were overcome and approval was no longer provisional.

Regarding the Beneficiary’s work in the United States, the Petitioner asserts: “In her current role with [the Petitioner], [the Beneficiary] has played a critical role in various California school districts, as she has presented her research . . . [and] has also trained teachers on how to apply this knowledge and awareness in a school setting.” The Petitioner does not adequately explain or demonstrate that the Beneficiary’s work as a contracted speech pathologist is critical to those school districts.

The Petitioner has not established that the Beneficiary meets this criterion.

If the above standards do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence to establish the beneficiary's eligibility. 8 C.F.R. § 204.5(h)(4).

At various stages in this proceeding, the Petitioner has asserted that some materials in the record constitute comparable evidence. In the denial notice, the Director concluded that the Petitioner had not established that the submitted evidence is comparable to regulatory criteria that do not readily apply to the Beneficiary's occupation.

When evaluating claimed comparable evidence, we consider whether the regulatory criteria are readily applicable to the person's occupation and, if not, whether the evidence provided is truly comparable to the criteria listed in that regulation. 6 *USCIS Policy Manual, supra*, at F.2 appendix.

On appeal, the Petitioner asserts that the Beneficiary's research and travel "grants are comparable to awards, because grants are awarded after a rigorous and competitive selection process." The criterion at 8 C.F.R. § 204.5(h)(3)(i) relates to nationally or internationally recognized awards for excellence. The Petitioner has not shown that the Beneficiary's grants are nationally or internationally recognized, and approved on the basis of excellence in the field. Furthermore, a petitioner may rely on comparable evidence only when the standard regulatory criteria do not readily apply to a beneficiary's occupation. 8 C.F.R. § 204.5(h)(4). Here, the Petitioner has claimed that the Beneficiary received a qualifying award, effectively stipulating that that the criterion relating to prizes and awards *does* readily apply to her occupation.

The burden is on the Petitioner to establish that (1) the standard regulatory criteria do not readily apply to the Beneficiary's occupation, and (2) the evidence submitted is indeed comparable to the evidence that would meet one of those criteria. The Petitioner has not met that burden.

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 Beneficiary has attained the acclaim and recognition required for the classification sought.

The Petitioner seeks to obtain for the Beneficiary 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 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 the Beneficiary's 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 record establishes that the Beneficiary used to perform research while employed in academia, and that she continues to provide therapeutic care to students in schools that contract the petitioning company for those services. While the Beneficiary's research has added knowledge to her field, and therapeutic services are valuable to the individuals receiving them, these activities are intrinsic to the Beneficiary's

occupation rather than hallmarks of specific recognition and acclaim. The Petitioner has shown that the Beneficiary has had an active and productive career, but has not met its burden of proof to establish that the Beneficiary has earned sustained national or international acclaim, and stands in the small percentage of those at the very top of her field. From the documentation submitted, her impact in the field appears to have been largely limited to the institutions where she has worked. Where the documentation does meet the letter of two regulatory criteria, it does so in ways that appear to be more routine in academia – specifically, through publication of the Beneficiary’s own research, and through peer review of articles by others. The Beneficiary’s evaluation of graduate theses appears to have been inherent to her responsibilities as a college professor.

The Petitioner has not demonstrated the Beneficiary’s eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.