



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

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

In Re: 31977149

Date: JULY 12, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, an attorney, has filed a petition on behalf of a physician who 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 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 under 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter *de novo*. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). 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. These individuals must seek to enter the United States to continue work in the area of extraordinary ability, and their entry into the United States will substantially benefit 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 the beneficiary’s achievements in the field through a one-time achievement in the form of a major, internationally recognized award. Or the petitioner can submit evidence 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. If those standards do not readily apply to the individual’s occupation, then the regulation at 8 C.F.R. § 204.5(h)(4) allows the submission of comparable evidence.

Once a petitioner has met the initial evidence requirements, the next step is a final merits determination, in which we 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 described the Beneficiary as “a Physician who specializes in Health Services Research.” The Beneficiary earned a bachelor’s degree in neuroscience from the [REDACTED] in 2016, and both a doctor of medicine and master of public health degrees from the [REDACTED] at the [REDACTED] in 2021. The Beneficiary then completed a one-year internal medicine internship in [REDACTED] Colorado in 2022. When the Petitioner filed the petition in September 2023, the Beneficiary was about one year into a four-year residency in diagnostic radiology at the [REDACTED]. The Beneficiary intends “to establish a network of free or accessible healthcare clinic[s] . . . to improve access to cancer screening services for underserved communities and people living in rural areas,” and to apply artificial intelligence “to create solutions to healthcare’s biggest problems.”

Because the Petitioner has not indicated or shown that the Beneficiary received a major, internationally recognized award, the Petitioner 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;
- (iii), Published material about the individual in professional or major media;
- (iv), Participation as a judge of the work of others;
- (v), Original contributions of major significance;
- (vi), Authorship of scholarly articles; and
- (viii), Leading or critical role for distinguished organizations or establishments.

The Director concluded that the Petitioner’s evidence met two of the criteria, relating to participation as a judge and authorship of scholarly articles. On appeal, the Petitioner asserts that the evidence also meets the criterion relating to leading or critical roles. The Petitioner does not contest the Director’s conclusions regarding the criteria relating to prizes, memberships, published material, and original contributions. Therefore, we consider the Petitioner to have waived appeal on those criteria.¹

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) (concluding the plaintiff’s claims were abandoned as he failed to raise them on appeal to the Administrative Appeals Office).

We agree with the Director that the Petitioner’s evidence has satisfied the criteria relating to judging and scholarly articles. We will discuss the remaining claimed criterion below.

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).

As explained below, we agree with the Director’s determination that the Petitioner has not submitted evidence that satisfies the requirements of this regulatory criterion.

The Petitioner stated that the Beneficiary “has performed in a leading and critical role for distinguished organizations.” The use of the plural “organizations” implies multiple organizations, but the Petitioner has identified only one organization.

The Petitioner initially stated:

During his tenure as a medical student at the [redacted] in 2017, [the Beneficiary] established a student-run clinic to serve individuals who inject drugs called [redacted]. He established the clinic to work in conjunction with the [redacted] which is the only [redacted] program in Florida. . . . [H]e implemented an interdisciplinary patient navigation program. . . . Moreover, he launched a successful campaign to improve legislation that would expand access to syringes throughout the state of Florida.

The Petitioner corroborated some of the above claims, but not others. For example, the Petitioner did not submit evidence to support the claim that the Beneficiary was significantly responsible for the passage of legislation to expand the [redacted] program beyond its initial pilot location in [redacted]. Statements in a brief are not evidence and thus are not entitled to any evidentiary weight. *See Matter of S-M-*, 22 I&N Dec. 49, 51 (BIA 1998).

The Petitioner submitted a copy of a letter from an assistant professor at [redacted] which reads, in part:

Our [redacted] program, the [redacted] is housed within our Division of Infectious Diseases. After I implemented this program, [students identified] a need to add a [redacted]. . . . In his roles as a founding member and project manager of the [redacted] [the Beneficiary] . . . created the clinic’s electronic health record and led recruitment and marketing efforts when the clinic first opened. . . . I have observed him expertly teaching the principles of harm reduction to student volunteers and visiting politicians.

Letters from persons with personal knowledge of the significance of the person’s leading or critical role can be particularly helpful, so long as the letters contain detailed and probative information that specifically addresses how the person’s role for the organization, establishment, division, or department was leading or critical. 6 *USCIS Policy Manual* F.2(B)(1), <https://www.uscis.gov/policy-manual>. In this instance, the faculty member’s letter does not fully address this requirement. We note that the letter was not written to support the petition in 2023. Rather, the faculty member wrote the

letter in 2020 as a recommendation for the Beneficiary's admission into a "diagnostic radiology residency." Therefore, the author of the letter was not seeking to address the regulatory requirements.

We agree with the Director's determination that, while the Petitioner has shown that the Beneficiary had a leading role at the [redacted] the Petitioner has not established that the [redacted] has a distinguished reputation. Similarly, the Petitioner has not established that the Beneficiary's establishment of the patient navigator program amounted to a leading or critical role for the [redacted]

The name [redacted] is an acronym for [redacted] a Florida state law. While the [redacted] program is statewide, the Petitioner does not claim that the Beneficiary has played a leading or critical role for the entire [redacted] program. Rather, the Beneficiary's involvement has been with one clinic affiliated with the first [redacted] at [redacted]

As "evidence that the [redacted] and the [redacted] ha[ve] been featured in the media on numerous occasions," the Petitioner submitted copies of the following materials:

- A 2019 blog post, published by a foundation that "awarded [the Beneficiary] a Student Summer Fellowship grant to support the implementation and evaluation of the Patient Navigator Program" at the [redacted]
- Printouts from the [redacted] website, quoting various media articles and university press releases about the [redacted]. One quotation refers directly to the "new student-run [redacted]" but the submitted printout does not identify the source of the quotation;
- A printout from the [redacted] website, describing the services offered and soliciting volunteers; and
- An article about the Beneficiary and the [redacted] from the Spring 2020 issue of [redacted] [redacted] described in the record as "[a] research magazine published by the students of the [redacted]"

In a request for evidence (RFE), the Director stated that the Petitioner had established the Beneficiary's leading or critical role for the [redacted] but had not shown that the [redacted] has a distinguished reputation. The Director noted that the clinic's own promotional materials have little weight as evidence of its reputation, and that [redacted] publications and websites do not establish the clinic's reputation beyond that university.

In response, the Petitioner submitted several materials about the [redacted] and stated: "it is abundantly clear that [redacted] is a distinguished organization." In this way, the Petitioner conflated the [redacted] and the [redacted]. But the [redacted] is an offshoot of the [redacted], and a leading or critical role for the clinic is not necessarily leading or critical for the entire [redacted]. Furthermore, while the [redacted] began as a single pilot location at [redacted] the record indicates that state legislation passed in 2019 allowed the establishment of additional exchange locations. Some of the materials submitted in response to the RFE concern the entire statewide [redacted] program. Such materials are only relevant if the Petitioner establishes the Beneficiary's leading or critical role for the program at a statewide level. The Petitioner does not meet this burden with the unsubstantiated claim that the Beneficiary was largely responsible for the passage of the 2019 legislation.

The distinction between the [redacted] and the [redacted] is evident, for example, in a 2019 article from National Public Radio's website, which discusses several [redacted] programs, but does not mention the [redacted] that the Beneficiary helped to establish. A 2021 article from *U.S. News and World Report* focuses on a "hybrid needle exchange telehealth and HIV medication outreach program." The record does not establish the extent of the Beneficiary's involvement, if any, with this aspect of [redacted] work. The article mentions that [redacted] provides "medical treatment" but does not specifically mention the [redacted]

When a beneficiary's role is leading or critical for a department or division of an organization, rather than for the entire organization, then the petitioner must establish the distinguished reputation of the department or division for which the beneficiary holds a leading or critical role. *See, generally, 6 USCIS Policy Manual, supra*, at F.2(B)(1).

The submitted materials likewise do not mention the patient navigator program, and therefore they do not show that the Beneficiary's involvement in establishing that program amounted to a leading or critical role for the [redacted]

The Director denied the petition, stating that the Petitioner established "the leading and/or critical role of the beneficiary at the [redacted] but, the record does not sufficiently establish the distinguished reputation enjoyed by the [redacted]. The Director also noted that some materials refer to the [redacted] as a potentially temporary pilot program, and cited apparent shortcomings in some of the submitted publications.

We agree with the Petitioner's assertion on appeal that, while some materials in the record refer to the [redacted] as a pilot program, other materials show that the State of Florida expanded by program by legislation in 2019. Also, some of the submitted online publications appear to derive from major media outlets. This information, however, does not rebut the Director's core determination, because that determination did not rest solely on those issues. The Director referred to "the [redacted] [redacted] and [redacted] indicating that the terms are not interchangeable names for the same thing, and concluded that "the record does not sufficiently establish the distinguished reputation enjoyed by the [redacted]. Coverage of the [redacted] was considerably more limited than coverage of the larger [redacted]

The Petitioner asserts, on appeal, that the evidence in the RFE response showed "the eminence and distinction of the [redacted] although the relevant materials contained little or no mention of the [redacted]

The Petitioner quotes *6 USCIS Policy Manual, supra*, at F.2(B)(1): "For academic departments, programs, and institutions, officers may also consider . . . receipt of government research grants as positive factors." The Petitioner states that the Director "ignored the evidence submitted in the RFE Response which indicates that the [redacted] is the recipient of a major NIH grant." The cited evidence is a press release from the [redacted] referring to "a new \$3.1 million grant from the National Institutes of Health." The press release does not mention the [redacted] or indicate that the scope of the grant includes [redacted]

The Petitioner has not established that the Beneficiary performed in a leading or critical role for the [redacted] as a whole, or that the [redacted] – the department or division for which he performed in such a role – has a distinguished reputation in its own right.

The Petitioner has not met its burden of proof to satisfy at least three of the initial evidentiary criteria at 8 C.F.R. § 203.4(h)(3). We will therefore dismiss the appeal.

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.

While we have not undertaken a full final merits determination, we will briefly address the issue of sustained acclaim. The bulk of the record concerns activities that the Beneficiary undertook while he was still a medical student, and his medical training was still ongoing when the Petitioner filed the petition in 2023. The evidence shows that the Beneficiary has been active and dedicated, but it does not establish that he has earned sustained national or international acclaim or reached the small percentage at the very top of the field of medicine. The Beneficiary’s activity as a judge has been as a reviewer for the *Journal of Student-Run Clinics*. The record does not indicate that this journal is a prestigious publication that invites only top physicians to participate in peer review. A submitted printout from the journal’s own website acknowledges that the journal has yet to “achieve the publication volume and quality criteria established by the National Library of Medicine” to qualify “to be indexed by popular searchable databases such as MEDLINE and PubMed Central.” The Petitioner initially claimed media coverage of the Beneficiary’s work, but has not shown that the Beneficiary received significant attention from independent major media, as opposed to local, campus, or student publications. Coverage of [redacted] that did not mention the Beneficiary does not contribute to his acclaim or recognition.

Also, the record includes little information about his accomplishments and recognition after he graduated from [redacted] more than two years before he filed the petition. The Petitioner has not documented any published articles by the Petitioner that did not derive from his work at [redacted]. The Petitioner’s RFE response indicated that the Beneficiary is the vice president of the Residents and Fellows Section of the [redacted] but the Petitioner did not establish that this position indicates recognition beyond trainee residents at the state level. Furthermore, the Petitioner did not mention this position at the time of filing, and the evidence in the RFE response does not say when the Beneficiary became the section’s vice president. Therefore, the Petitioner has not shown that the Beneficiary held this position at the time of filing. The Petitioner must meet all eligibility requirements at the time of filing. See 8 C.F.R. § 103.2(b)(1). Subsequent facts cannot retroactively establish eligibility. See *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg’l Comm’r 1971).

Also in the RFE response, the Petitioner submitted evidence that the Beneficiary interviewed for residencies at several prestigious medical schools in 2020. The Petitioner claimed: “Interviews at these prestigious institutions are only offered to a small percentage [of] professionals who have risen

to the top of their field of endeavor.” The Petitioner did not substantiate this claim, and as noted above the Petitioner’s unsupported claims have no evidentiary weight. Residencies are late-stage training for recent medical school graduates. The Petitioner has not established that interviews for such residencies are recognition afforded to “professionals who have risen to the top of their field.”

The Beneficiary 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 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 recognition of the Beneficiary’s work that indicates 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 not demonstrated the Beneficiary’s eligibility as an individual of extraordinary ability. We will therefore dismiss the appeal.

ORDER: The appeal is dismissed.