



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

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

In Re: 20612340

Date: JUN. 08, 2022

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Outstanding Professors/Researchers)

The Petitioner, a manufacturer of [redacted] food ingredients, seeks to classify the Beneficiary as an outstanding researcher. Immigration and Nationality Act (the Act) section 203(b)(1)(B), 8 U.S.C. § 1153(b)(1)(B). This first preference classification makes immigrant visas available to foreign nationals who are internationally recognized as outstanding in their academic field.

The Director of the Nebraska Service Center denied the petition, concluding that although the initial evidence requirements were met, the record did not establish that the Beneficiary is internationally recognized as outstanding in the academic field of food science.

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)(B)(i) of the Act provides that a foreign national is an outstanding professor or researcher if:

- (i) the alien is recognized internationally as outstanding in a specific academic area,
- (ii) the alien has at least 3 years of experience in teaching or research in the academic area, and
- (iii) the alien seeks to enter the United States [for a qualifying position with a university, institution of higher education, or certain private employers].

To establish a professor or researcher's eligibility, a petitioner must provide initial qualifying documentation that meets at least two of six categories of specific objective evidence set forth at 8 C.F.R. § 204.5(i)(3)(i)(A)-(F). This, however, is only the first step, and the successful submission of evidence meeting at least two criteria does not, in and of itself, establish eligibility for this classification.¹ When a petitioner submits sufficient evidence at the first step, we will then conduct a

¹ USCIS has previously confirmed the applicability of this two-part adjudicative approach in the context of outstanding professors and researchers. 6 USCIS Policy Manual F.3(B)(2), <https://www.uscis.gov/policymanual>.

final merits determination to decide whether the evidence in its totality shows that the beneficiary is recognized as outstanding in his or her academic field. 8 C.F.R. § 204.5(i)(3)(i).

In addition, the regulation at 8 C.F.R. § 204.5(i)(3)(ii) provides that a petition for an outstanding professor or researcher must be accompanied evidence that the foreign national has at least three years of experience in teaching and/or research in the academic field.

II. ANALYSIS

The Beneficiary earned her Ph.D. in food science from the University [redacted] in August 2019. She worked as an intern at [redacted] Company for parts of 2014 and 2015, and began her employment as an Associate Scientist II for the Petitioner in September 2019. The focus of her current research is the development of [redacted] food palatants.

In his decision, the Director found that the Beneficiary met three of the evidentiary criteria, relating to her participation as a judge of the work of others in her field, original scientific or scholarly research contributions to her field, and authorship of scholarly books or articles. However, in conducting a final merits determination, he concluded that the totality of the record did not establish the Beneficiary's international recognition in her academic field. Upon review, we agree that the Beneficiary meets the initial evidence requirements, and will therefore consider all of the evidence in the record in conducting a final merits determination.

In a final merits determination, we weigh the totality of the evidence to determine whether a petitioner has established, by a preponderance of the evidence, that the beneficiary's achievements have been internationally recognized as outstanding in the academic field. Here, we agree with the Director that the Petitioner has not demonstrated the Beneficiary's eligibility.

On appeal, the Petitioner argues that instead of applying the two-step adjudication approach adopted from *Kazarian v. USCIS*, 596 F.3d 1115, 1121-22 (9th Cir. 2010), the Director should have applied a different standard taken from *Bulletini v. INS*, 860 F.Supp. 1222 (E.D. Mich 1994). However, as previously noted, the *Kazarian* approach and its application to this classification has been incorporated into the USCIS Policy Manual, so we find no error in the Director's decision in accordance with that policy.

The Petitioner next asserts that in conducting the final merits determination, the Director erred by applying a more restrictive evidentiary standard and imposing "novel extra international recognition requirements under the evidentiary criteria beyond those set forth in the governing regulation. While acknowledging its burden of proof, the Petitioner asserts that the evidence "need not be inherently outstanding with international recognition." However, this argument reflects a misunderstanding of the two-step adjudication approach under USCIS policy. While adjudicators are limited to the plain text of the individual criteria under the first step, once a petitioner has established that a beneficiary meets those initial evidence requirements, the requirements of the criteria are not applied in conducting the final merits analysis. Rather, the totality of the evidence must show that a beneficiary is internationally recognized as outstanding in their academic field.

In discussing the evidence in the record in its appeal brief, the Petitioner first focuses on the reference letters submitted by other researchers in the Beneficiary's field, stating on several occasions that the Director rejected this evidence. However, we note that the Director's decision included a list of the letters and discussed the contents of three of them, ultimately concluding that the statements made in these letters are not supported elsewhere in the record. Further, despite the Petitioner's claim that the Director falsely considered these letters to all be "solicited references from her circle of collaborators and professors," this is not what the decision states.² After review, we note that although the letters provide detail regarding the Beneficiary's research and its impact upon her academic field, when considered as part of the totality of the evidence they do not show that her research has been internationally recognized as outstanding.³

For example, [redacted] of [redacted] University writes in his letter that he knows of the Beneficiary's work through her publications, but does not indicate that he has cited it in his own published research or adopted any research techniques or protocols introduced in the Beneficiary's publications. As an example of the Beneficiary's work being "embraced by her peers," [redacted] refers to a research project titled [redacted] which he states is based upon her work. However, a copy of a report for this project, submitted as Exhibit 16 of the original submission, shows that the Beneficiary's work was a part of this project at the University of [redacted] during her graduate studies, not that an independent group relied or built upon her previous work as suggested by [redacted]. He also writes that the significance of the Beneficiary's work is shown by her article, [redacted] being chosen for the cover page of the issue of *Journal of Agriculture and Food Chemistry (JAFCh)* in which it was published. While it is true that the monthly journal chooses only 12 papers per year to feature on its cover, [redacted] does not explain why being chosen as a cover article demonstrates this paper's significance to the field of food science. His second letter, in which [redacted] identifies himself as an [redacted] *JAFCh*, also does not explain any connection between an article being chosen for appearance on the cover of an issue and its importance to research in the field.

Another writer of two reference letters was [redacted] of the University of [redacted]. He describes the Beneficiary's research in the area of [redacted] chemistry, specifically focusing on natural products, and notes that she authored a review article focusing on their effects in combatting obesity. [redacted] refers to two examples of other research groups who cited to this review paper in support of his statement that this work is a "crucial resource" for other researchers. However, we note that the article published in *Acta Pharmaceutica Sinica B* states that "there is no shortage of reviews on [redacted] including natural products..." when citing to this paper along with two others. Similarly, the other paper referred to in [redacted] letter, published in *Scientific Reports*, also cites to two other papers in noting the [redacted]. While this evidence shows that others have cited to the Beneficiary's paper, it does not support [redacted] conclusion regarding the significance of this work, or show that it has been internationally recognized as outstanding.

² The decision states, after a review of the letters, that "the record does not establish that the beneficiary is recognized internationally as outstanding beyond these solicited references and her circle of collaborators and professors." (emphasis added)

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

A third expert in the area of food science who submitted a reference letter for the Beneficiary is [redacted] of [redacted] University, who also says they have not worked with her but know of her work through her publications. [redacted] states in their letter that the number of citations of the Beneficiary's work represents "a tremendous accomplishment," and that many of these citations show direct implementation of her work. But they do not provide specific examples of the implementation of her work, and while the letter describes her research in great detail, it does not provide support for the statement that her research has "had a profound impact on studies on the [redacted]"

In its appeal, the Petitioner asserts that the statements regarding the Beneficiary's recognition in her field as outstanding is corroborated by her citation record, copies of citing articles, and analytic data from Altmetric. It also asserts, as with the reference letters, that the Director failed to consider each of these groups of evidence, but a review of the decision indicates otherwise. While the Petitioner may disagree with the conclusions reached by the Director after review of this evidence, its statements that it was not considered lack support.

Turning first to the evidence of the number of citations to the Beneficiary's published research, this evidence, along with related evidence such as journal impact factors and analytics, can help to show how a researcher's work has made original contributions to their academic field. *See* 6 USCIS Policy Manual F.3(B)(1), <https://www.uscis.gov/policy-manual>. Similarly, such evidence relating to a researcher's overall body of work may contribute to showing the extent to which their work has been recognized as outstanding at the national or international level. In this case, the Director acknowledged the number of citations to the Beneficiary's overall work, but noted that the record lacked additional evidence which put those overall figures in context. On appeal, the Petitioner asserts that the Beneficiary's "extensive worldwide citation record" shows her international recognition in the field, but the number of citations to her work by scientists working in other countries does not alone show that those scientists, or the academic field in general, consider her work to be outstanding. Both the quality and quantity of evidence in the record must be considered in a final merits determination, and in this case, the record does not establish that the Beneficiary's work is considered to be outstanding at the international level.

For example, in responding to the Director's NOID, the Petitioner submitted several articles published in scientific journals in which the researchers appear to have adopted a laboratory procedure used by the Beneficiary and reported in the previously mentioned *JAF* article published in 2018. However, three of those articles were authored by [redacted] and his group at the University of [redacted] which indicates that he continues to use the same procedures established earlier in his lab. This is not indicative of international recognition of the Beneficiary's work, but is rather a continuation of the same research in which she previously participated, using the same protocols. In two additional articles written by other research groups, procedures were adopted not just from those described in the Beneficiary's published work, but from those of other groups as well. While this evidence shows that the Beneficiary's work has been relied upon to some extent by others in their own research, it does not show international recognition of this work.

The Petitioner also points to analytic scores provided by Altmetric in support of the claim that the Beneficiary's work is internationally recognized as outstanding. Initially, we agree with the Petitioner that the Director's blanket statement that this evidence has no probative value is erroneous, and will

consider it in our review. The scores indicate that her 2018 article published in *JAF*C was viewed 1687 times as of September 2021, received either a “good” or “high” attention score depending on which parameters are considered, and was cited on 21 occasions by other researchers in their own published work. The Petitioner also submitted the same information related to the Beneficiary’s article published in *Molecules* in 2016. We note that the record shows that the Altmetric attention score is based upon a variety of factors, including mentions in news stories, blogs and social media, and it is therefore not based upon reactions only from others in the academic field. The Petitioner has not demonstrated that this score is directly related to or indicative of recognition as outstanding in the academic field. In addition, the record does not include evidence which puts the number of views of these articles in context with those of other published papers in the field.

Second, the Petitioner submitted evidence concerning the impact factor of *JAF*C and *Molecules*, as well as rankings and other analytics scores. Although the record shows that both of these journals have impact factors above 4, impact factor and other journal analytics alone do not show that all articles published in these journals are necessarily considered to be outstanding and receive international recognition. Rather, we look to the reaction of other researchers to the individual paper as evidence of its reception, recognition or application in the academic field. The “Dimensions” analytics for the *Molecules* article indicates that it has received more than 7 times the citations than average,⁴ while this data was not available for the 2018 *JAF*C article at the time of filing. Evidence regarding three other articles authored by the Beneficiary shows a slightly above-average rate of citation. While this evidence suggests that the review article authored by the Beneficiary received attention in her academic field, the statistics and analytics do not establish that she, and her work as a whole, is internationally recognized as standing out from other food science researchers.

Regarding the Beneficiary’s peer review activity, the Director concluded in his decision that although the evidence was sufficient to meet the criterion at 8 C.F.R. § 204.5(i)(3)(i)(D), her participation in the peer-review process through reviewing 20 manuscripts submitted to *JAF*C was routine and did not show her recognition or standing within the field of food science. On appeal, the Petitioner asserts that this activity shows recognition of the Beneficiary’s expertise in her field. Although the Beneficiary’s expertise, and therefore her qualification to serve as a peer reviewer for scientific journals in her field, is not in question, the record does not establish that this work is indicative of international recognition as outstanding. We acknowledge [redacted] statements in his second letter which tie the Beneficiary’s publication in and peer review for *JAF*C to recognition in her academic field, but we note that they are not supported by documentary evidence of the criteria or process the journal uses to select peer-reviewers.

Finally, the Petitioner included additional evidence with its appeal brief, an “expert opinion evaluation” of the Beneficiary’s credentials and experience, which it urges us to consider. Where, as here, a Petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). In addition, even if we were to consider this evidence, we note that this evaluation is based upon review of the same materials submitted in support of this petition, was created solely for the purpose of supporting this petition, is not based upon first-hand knowledge of the Beneficiary’s

⁴ A different page lists “field citation ratio” as 7.11 and “relative citation ratio” as 2.34 for this article.

work, and provides opinions relating to her qualification for a benefit under immigration law, an area in which the author does not claim expertise. The letter simply recites information taken from the record, including the expert opinions of others as discussed above, and therefore is of marginal probative value.

The evidence submitted by the Petitioner shows that the Beneficiary has contributed to the field of food science through her original research published in scientific journals and presented at conferences, as well as through her service as a peer reviewer. However, after consideration of the totality of this evidence, which also included her receipt of a graduate fellowship, evidence relating to citations to her published work by other researchers, and several reference letters, we conclude that it does not establish that she has been internationally recognized as an outstanding researcher in her academic field.

III. CONCLUSION

The evidence demonstrates that the Beneficiary meets at least two of the evidentiary criteria under 8 C.F.R. § 204.5(i)(3)(i). However, upon review of the totality of this evidence, it does not establish that she is internationally recognized as an outstanding professor or researcher in her academic field. For this reasons, the appeal will be dismissed.

ORDER: The appeal is dismissed.