



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

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

In Re: 19419543

Date: AUG. 25, 2022

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Schedule A, Group II)

The Petitioner, a research and manufacturing business, seeks to classify the Beneficiary as an individual of exceptional ability in the sciences or as an advanced degree professional, under the second-preference immigrant category. *See* Immigration and Nationality Act (the Act) section 203(b)(2)(A), 8 U.S.C. § 1153(b)(2)(A). Exceptional ability in the sciences means a degree of expertise significantly above that ordinarily encountered in the sciences or an academic degree above that of baccalaureate. 8 C.F.R. § 204.5(k). The Petitioner also seeks designation under 20 C.F.R. § 656.5, Schedule A, Group II.

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish, as required, that the Beneficiary satisfied at least two of the seven evidentiary criteria at 20 C.F.R. § 656.15(d)(1)(i)-(vii).

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit by a preponderance of evidence. *See* Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). Upon *de novo* review, we will dismiss the appeal.

I. LAW

Second preference immigrant visas are available for qualified individuals who are advanced-degree professionals or who, because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States. Section 203(b)(2) of the Act.

Every petition under this classification must include one of the following three documents: (1) an individual labor certification from the U.S. Department of Labor (DOL), (2) an application for Schedule A designation, or (3) documentation to establish that the beneficiary qualifies for one of the shortage occupations in the DOL's Labor Market Information Pilot Program. 8 C.F.R. § 204.5(k)(4)(i).

Schedule A occupations are codified at 20 C.F.R. § 656.5(b) for which the DOL has determined there are not sufficient U.S. workers who are able, willing, qualified, and available, and that the employment

of these foreign nationals will not adversely affect the wages and working conditions of similarly employed United States workers.

Schedule A, Group II designation requires that a petitioner submit evidence of the beneficiary's exceptional ability in the sciences or arts as demonstrated by widespread acclaim and international recognition from recognized experts in his or her field. 20 C.F.R. § 656.15(d)(1). In addition, the petitioner must provide evidence meeting at least two of seven criteria (for example awards, memberships, published material, and contributions). *Id.* at (i)-(vii). Beyond demonstrating widespread acclaim and international recognition, the documentation presented must show that the position the beneficiary has worked in the year prior to filing and the one sought both require an individual of exceptional ability. *Id.* As with any filing for an employment-based immigrant that requires an offer of employment, this petition must be accompanied by evidence that the prospective U.S. employer has the ability to pay the proffered wage. 8 C.F.R. § 204.5(g)(2).

II. ANALYSIS

The Petitioner indicated on ETA Form 9089, Application for Permanent Employment Certification, that it seeks to employ the Beneficiary as a food scientist and technologist. The Director determined that the Beneficiary qualified as a member of the professions holding an advanced degree but denied the petition because the Petitioner did not establish that the Beneficiary met at least two of the seven listed criteria under the Schedule A, Group II regulations. Specifically, the Director concluded that the Beneficiary satisfied only one criterion - authorship of scholarly articles under 20 C.F.R. § 656.15(d)(1)(vi).

On appeal, the Petitioner claims that the Beneficiary fulfills one additional criterion under 20 C.F.R. § 656.15(d)(1)(v), which requires "evidence of the [noncitizen]'s original scientific or scholarly research contributions of major significance in the field for which certification is sought." Specifically, the Petitioner claims:

The evidence in the record demonstrates that the contributions in the filed [*sic*] are original, rise to the level of major significance beyond a research project or an organization, and are widely implemented in the industry, establishing remarkable impact and influence in the field. The documentary evidence demonstrates how Beneficiary's professional experience and accomplishments are considered original contributions of major significance in the field consistent with the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v), thus, satisfying the regulatory requirement and meeting the eligibility for this criterion.

However, the Petitioner erroneously cites to the regulation at 8 C.F.R. § 204.5(h)(3)(v), which applies to individuals seeking immigrant extraordinary ability classification. *See* section 203(b)(1)(A) of the Act, 8 U.S.C. § 1153(b)(1)(A). Although similar, the regulation at 20 C.F.R. § 656.15(d)(1)(v) requires "[e]vidence of the alien's original scientific or scholarly research contributions of major significance in the field for which classification is sought." Consistent with this regulatory criterion, a petitioner may show the beneficiary's eligibility based on original scientific or research contributions that have been widely implemented throughout the field, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance in the field.

The Petitioner contends that the Beneficiary's research with an [redacted] and [redacted] extract antioxidant ingredient, a molecular analysis of an [redacted] extract antioxidant ingredient, a new [redacted] antioxidant molecule, and [redacted] emulsifier properties meet this criterion and references previously submitted testimonial letters from [redacted] and [redacted]. Although the letters discuss the Beneficiary's research with the Petitioner, they do not elaborate and explain how the research and findings rise to the level of major significance in the field. For instance, [redacted] indicated that the Beneficiary's [redacted] and [redacted] extract research "opened the door of opportunities to develop more effective antioxidant combinations."¹ However, [redacted] did not provide further details and identify what opportunities or combinations were developed as a result of the Beneficiary's research to show its major significance in the field. While the letters establish the originality of the Beneficiary's work, they do not contain sufficient information articulating the impact or influence in the field in a majorly significant manner.

Moreover, although the Petitioner offers three additional recommendation letters for the first time on appeal, we will not consider new eligibility claims or evidence. *See Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988) (providing that if "the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the denial, we will not consider evidence submitted on appeal of any purpose" and that "we will adjudicate the appeal based on the record of proceedings" before the Chief); *see also Matter of Obaighbena*, 19 I&N Dec. 533 (BIA 1988). Here, the Petitioner did not demonstrate why it could not have submitted the letters in response to the Director's request for evidence.

Likewise, the Petitioner submits evidence of patent approvals, in which the Beneficiary is listed as one of the inventors, after the initial filing of the petition. The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of filing and continuing through adjudication. *See* 8 C.F.R. § 103.2(b)(1). We will not consider new eligibility claims or evidence for the first time on appeal. *See Soriano*, 19 I&N Dec. 766; *see also Obaighbena* 19 I&N Dec. at 533. Further, in general, a patent recognizes the originality of an invention or idea but does not necessarily establish a contribution of major significance in the field unless corroborating evidence reflects important implications of the patent in the field.

The Petitioner also indicates that the Beneficiary authored an article, [redacted] [redacted] in the *Journal of the American Oil Chemists' Society* and presented her work at conferences, such as the 2019 American Oil Chemists' Society Annual Meeting. Similar to patents, the publication in journals or presentation at conferences may signify the originality of an individual's research and work; however, publication or presentation alone does establish the significance of the findings in the field. Without further supporting evidence, such as documentation reflecting an unusually high citation rate to the Beneficiary's published material or presentations, the Petitioner did not show that her work has risen to a level of major significance consistent with this regulatory criterion.

¹ Although we discuss only one sample letter, we have reviewed and considered each one.

In addition, while the Petitioner provided a letter from the U.S. Food and Drug Administration stating that it has “no questions at this time regarding [the Petitioner’s] conclusion that [redacted] is GRAS [generally recognized as safe] under its intended conditions of use” and “[t]his letter is not an affirmation that [redacted] is GRAS under 21 CFR 170.35,” the Petitioner did not show how [redacted] has been majorly significant in the field. Although it submitted evidence of press releases and promotional material, the Petitioner did not demonstrate how [redacted] has impacted the overall field. Likewise, the record contains evidence from the Petitioner announcing that [redacted] be [redacted]. Again, even though it established the Beneficiary’s involvement with the research, the Petitioner did not show the impact or influence of the Beneficiary’s work in the general field beyond her own employer.

For the reasons discussed above, considered both individually and collectively, the Petitioner has not shown that the Beneficiary has made original scientific or scholarly research contributions of major significance in the field.

III. CONCLUSION

Because the record does not establish that the Beneficiary has met at least two of the seven criteria under 20 C.F.R. § 656.15(d)(1)(i)-(vii), we need not examine the additional requirements that the Beneficiary show widespread acclaim and international recognition by experts in her field and that her work in the past year did, and her intended work in the United States will, require exceptional ability under 20 C.F.R. §656.15(d)(1). Accordingly, we reserve these issues.²

For the reasons discussed above, the Petitioner has not demonstrated the Beneficiary’s eligibility as a member of the professions holding an advanced degree seeking Schedule A, Group II designation.

ORDER: The appeal is dismissed.

² See *INS v. Bagamasbad*, 429 U.S. at 25-26 (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach); see also *L-A-C-*, 26 I&N Dec. at 516, n.7 (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).