



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

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

In Re: 25939386

Date: MAR. 23, 2023

Appeal of Vermont Service Center Decision

Form I-129, Petition for a Nonimmigrant Worker (Extraordinary Ability – O)

The Petitioner, an international management consulting firm, seeks to classify the Beneficiary, an ophthalmology specialist, as an individual of extraordinary ability. This O-1 nonimmigrant visa classification is available to individuals who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation. *See* Immigration and Nationality Act (the Act) section 101(a)(15)(O)(i), 8 U.S.C. § 1101(a)(15)(O)(i).

The Director of the Vermont Service Center denied the petition, concluding the Beneficiary had not satisfied the initial evidentiary criteria applicable to individuals of extraordinary ability: either receipt of a major, internationally recognized award or at least three of eight possible forms of documentation. 8 C.F.R. § 214.2(o)(3)(iii)(A)-(B). The matter is now before us on appeal. 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**

As relevant here, section 101(a)(15)(O)(i) of the Act establishes O-1 classification for an individual who has extraordinary ability in the sciences, arts, education, business, or athletics that has been demonstrated by sustained national or international acclaim, whose achievements have been recognized in the field through extensive documentation, and who seeks to enter the United States to continue work in the area of extraordinary ability. Department of Homeland Security (DHS) regulations define “extraordinary ability in the field of science, education, business, or athletics” as “a level of expertise indicating that the person is one of the small percentage who have arisen to the very top of the field of endeavor.” 8 C.F.R. § 214.2(o)(3)(ii).

Next, DHS regulations set forth alternative evidentiary criteria for establishing a beneficiary’s sustained acclaim and the recognition of achievements. A petitioner may submit evidence either

of “a major, internationally recognized award, such as a Nobel Prize,” or of at least three of eight listed categories of documents. 8 C.F.R. § 214.2(o)(3)(iii)(A)-(B).

The submission of documents satisfying the initial evidentiary criteria does not, in and of itself, establish eligibility for O-1 classification. *See* 59 Fed. Reg. 41818, 41820 (Aug. 15, 1994) (“The evidence submitted by the petitioner is not the standard for the classification, but merely the mechanism to establish whether the standard has been met.”) Accordingly, where a petitioner provides qualifying evidence satisfying the initial evidentiary criteria, we will determine whether the totality of the record and the quality of the evidence shows sustained national or international acclaim such that the individual is among the small percentage at the very top of the field of endeavor. *See* section 101(a)(15)(o)(i) of the Act and 8 C.F.R. § 214.2(o)(3)(ii), (iii).

## II. ANALYSIS

Because the Petitioner did not indicate or establish the Beneficiary has received a major, internationally recognized award, it must demonstrate the Beneficiary satisfies at least three of the alternate regulatory criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B)(1)-(8). The Director determined the Beneficiary fulfilled only two criteria, judging under 8 C.F.R. § 214.2(o)(3)(B)(iii)(4) and scholarly articles under 8 C.F.R. § 214.2(o)(3)(B)(iii)(6). On appeal, the Petitioner maintains the Beneficiary satisfies two additional criteria. After reviewing all of the submitted evidence, the record does not reflect the Beneficiary meets the requirements of at least three criteria.

*Evidence of the alien’s original scientific, scholarly, or business-related contributions of major significance in the field.* 8 C.F.R. § 214.2(o)(3)(iii)(B)(5).

Analysis under this criterion focuses on whether the beneficiary’s original work constitutes major, significant contributions to the field.<sup>1</sup> For instance, published research that has provoked widespread commentary on its importance from others in the field, and documentation that it has been highly cited relative to other work in that field, may be probative of the significance of the beneficiary’s contributions to the field of endeavor.<sup>2</sup> Similarly, evidence that the beneficiary developed a patented technology that has attracted significant attention or commercialization may establish the significance of the beneficiary’s original contribution to the field.<sup>3</sup>

The Petitioner argues that submitted recommendation letters demonstrate the Beneficiary’s eligibility for this criterion and specifically cites to a letter from Dr. H-E-W-, who claimed that “one of [the Beneficiary’s] most significant research projects was her paper, [REDACTED] [REDACTED] which had a significant impact in my clinical care,” and “I can confirm that this work has received much commentary and widespread discussion and it has been implemented by many of my own colleagues including myself.” Although the letter makes broad assertions, Dr. H-E-W- did not provide specific information supporting her claims.<sup>4</sup> For

<sup>1</sup> *See* 2 USCIS Policy Manual, M.4(C)(2)(appendix), <https://www.uscis.gov/policymanual>.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *See* 2 USCIS Policy Manual, *supra*, M.4(C)(2)(appendix) (instructing that detailed letters from experts in the field explaining the nature and significance of the beneficiary’s contribution(s) may also provide valuable context for evaluating

instance, the letter does not further explain the level of “much commentary and widespread discussion” to show the Beneficiary’s paper and research is considered in the field to be at a level of major significance.<sup>5</sup> While Dr. H-E-W- indicated that she, as well as her own colleagues, implemented the Beneficiary’s work, the letter does not elaborate and show the impact of the Beneficiary’s work on the overall field rather than limited to Dr. H-E-W- and her colleagues.

Likewise, the record contains other recommendation letters that discuss the Petitioner’s research and findings and indicate their publication in journals, highlighting their rankings.<sup>6</sup> However, the letters do not expand upon how the Beneficiary’s work has significantly impacted or influenced the field in a major way. In the absence of specific information detailing the impact or influence of the Petitioner’s research, the letters do not demonstrate that the work has risen to a level of major significance in the field. Moreover, a publication that bears a high ranking or impact factor reflects the publication’s overall citation rate; it does not show an author’s influence or the impact of research in the field or that every article published in a “prestigious” journal automatically indicates a contribution of major significance in the field.

Finally, the Petitioner argues that “[t]he Service does acknowledge and the record contains evidence that the work in which the beneficiary participated, and subsequently published, has been cited multiple times.” Although some of the recommendation letters reference the authors and colleagues implementing the Beneficiary’s research in their own work, the letters do not reflect that the Beneficiary “has been cited multiple times.” Moreover, the record does not contain other documentation identifying or specifying the number of citations to the Beneficiary’s individual papers. The Petitioner, for instance, did not provide independent citatory evidence, including evidence establishing the major significance of such citation data.<sup>7</sup>

Accordingly, considered both individually and collectively, the Petitioner has not shown the Beneficiary has made original contributions of major significance in the field.

*Evidence that the alien has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation.* 8 C.F.R. § 214.2(o)(3)(iii)(B)(7).

In order to meet this criterion, the Petitioner must demonstrate that the Beneficiary has been employed in a critical or essential capacity for organizations and establishments having distinguished reputations. 8 C.F.R. § 214.2(o)(3)(iii)(B)(7). The *USCIS Policy Manual* provides the following further guidance:<sup>8</sup>

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the claimed original contributions of major significance, particularly when the record includes documentation corroborating the claimed significance).

<sup>5</sup> See also, e.g., letter from Dr. W-W-, who claimed that the Beneficiary “produced truly groundbreaking research that has also impacted my own work” and “[t]his work has unquestionably had wide-reaching international influence” but does not further explain these claims to show original contributions of major significance.

<sup>6</sup> See, e.g., letters from Dr. M-A-B- and Dr. D-S-F-.

<sup>7</sup> See 2 *USCIS Policy Manual*, *supra*, M.4(C)(2)(appendix) (providing an example of documentation that the beneficiary’s original work was cited at a level indicative of major significance in the field).

<sup>8</sup> See 2 *USCIS Policy Manual*, *supra*, M.4(C)(2)(appendix) (listing the following examples of critical or essential positions: senior faculty or senior research position for a distinguished academic department or program; senior research position for a distinguished nonacademic institution or company; principal or named investigator for a department, institution, or

To show a critical role, the evidence should establish that the beneficiary has contributed in a way that is of significant importance to the organization or establishment's activities. To show an essential role, the evidence should establish that the beneficiary's role is (or was) integral to the entity. A leadership role in an organization often qualifies as critical or essential.

For a supporting role to be considered critical or essential, USCIS considers other factors, such as whether the beneficiary's performance in the role is (or was) integral to important to the organization or establishment's goals or activities, especially in relation to others in similar positions within the organization.

It is not the title of the beneficiary's role, but rather the beneficiary's duties and performance in the role that determines whether the role is (or was) critical or essential. Detailed letters from persons with personal knowledge of the significance of the beneficiary's role can be particularly helpful in analyzing this criterion. The organization need not have directly employed the beneficiary.

The Petitioner argues the Beneficiary's eligibility based on her role with the [redacted] [redacted] at [redacted] University and references an initial letter from Dr. B-K-S-, who stated:

[The Beneficiary] held various responsibilities in research, teaching, and administration of the institution. In research, she performed independent research around vision impairment and cognitive decline, access to healthcare for those with sensory impairment, glaucoma, cornea, public health, ophthalmology, and eyecare-related health services research using large national databases as well as institutional data. Her work focused on improving access to, quality of and equity in ophthalmic care. The research utilized complex quantitative and qualitative methods. [The Beneficiary's] research has been published in multiple renowned peer-viewed international journals and presented at various national meetings. In the teaching realm, as a Postdoctoral Fellow at [redacted] University School of Medicine, [the Beneficiary] conducted and presented in educational sessions to other postdoctoral fellows that aided in developing their own research skills and helped them publish in high impact peer-reviewed journals. She additionally trained medical students at [redacted] [redacted] who complete their own research electives at the [redacted] in basic research methods, study conduct, statistical skills, and scientific writing. Administratively, [the Beneficiary] organized and managed multiple meetings within the center which included scientific educational sessions for faculty, fellows, medical and master's students, and research staff. This has made a tremendous impact on the quality of research from our group.

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business that received a merit-based government award, such as an academic research or Small Business Innovation Research grant; member of a key committee within a distinguished organization; founder or co-founder of, or contributor of intellectual property to, a startup business that has a distinguished reputation; and critical or essential supporting role for a distinguished organization or a distinguished division of an institution or company, as explained in detail by the director or a principal investigator of the relevant organization or division).

Although Dr. B-K-S- described the Beneficiary's various responsibilities, the letter does not contain specific information explaining how the Beneficiary contributed in a way that was of significant importance to the [ ] activities or that the Beneficiary was integral to the institute. The letter, for example, did not elaborate and demonstrate how the Petitioner's performance of conducting independent research, training medical students, or organizing meetings rose to the level of a critical or essential capacity within [ ]. Furthermore, the letter did not contain corroborating information to support the claim of the Beneficiary making "a tremendous impact."

In response to the Director's request for evidence (RFE), the Petitioner submitted a supplemental letter from Dr. B-K-S- who indicated the Beneficiary "was an integral and critical part of my team at the [ ] at [ ] University" and "[h]er ability to manage and work with large amounts of data, analyze it, identify important findings, and draft manuscripts was by far beyond the skills of any of her colleagues." Here, letter does not claim the Beneficiary's role for [ ] instead, the letter references [ ] an organization or establishment not claimed by the Petitioner. In addition, neither the letter nor the Petitioner explained the relationship or hierarchy, if any, between [ ] and [ ] let alone how the Beneficiary's role with [ ] also reflected a critical or essential role for [ ]. Moreover, although the first letter provided information establishing the distinguished reputation of [ ] the supplemental letter contains no information relating to the reputation of [ ].

The Petitioner also argues the Beneficiary's eligibility for this criterion based on her postdoctoral fellow position with the [ ] at the University of [ ] and references an initial letter from Dr. J-R-E-, who indicated:

. . . [The Beneficiary] has played an instrumental role in planning a large longitudinal population-based study called the [ ] [ ], which will join a growing network of harmonized panel studies of aging in 45 countries modeled on the U.S. Health and Retirement Study (HRS) . . . . [The Beneficiary] is playing a vital role in developing this infrastructure and survey design in collaboration with multiple stake holders both in the US and in [ ]. She is currently engaged in the creation of a survey instrument by invoking key co-investigators from other top universities such as Johns Hopkins, University of Southern California and University of California, Berkeley.

According to Dr. J-R-E-'s letter, the Beneficiary is in the process of developing a survey for [ ]. However, the letter does not contain detailed information explaining how the Beneficiary's performance has contributed in a way that is of significant importance to [ ] or that the Beneficiary has been integral to it. Although the letter indicates the Beneficiary as being "instrumental" and "vital," Dr. J-R-E- does not elaborate and explain his claims to show the Beneficiary's employment in a critical or essential capacity.

In response to the Director's RFE, the Petitioner submitted a supplemental letter from Dr. J-R-E- who stated that the Beneficiary "is the only postdoc playing a critical role in this project," and "[s]he has single-handedly developed the survey instrument which we plan to pilot later this year." The letter, however, does not explain the significance of the Beneficiary being the only postdoctoral fellow working on the project or the relevance of her single-handedly developing the survey that has yet to

be administered. Here, the letter does not contain sufficient information reflecting that the Beneficiary's contributions to [ ] has resulted in significant importance to [ ] activities.<sup>9</sup>

Finally, the Petitioner references a letter from Dr. J-M-L-, a partner for the Petitioner. However, the record does not show that the Petitioner has ever employed the Beneficiary, let alone in a critical or essential capacity. Instead, Dr. J-M-L- discusses the Beneficiary's employment in futuristic terms, such as the Beneficiary "will hold a critical and essential role," "will work to address specific challenges in the field of ophthalmology," and "will be asked to provide support." The regulation 8 C.F.R. § 214.2(o)(3)(iii)(B)(7) requires "[e]vidence that the alien has been employed" rather than evidence that the Beneficiary will be employed; therefore, the Petitioner did not establish that its intended employment of the Beneficiary qualifies for this criterion.

For the reasons discussed above, the Petitioner did not establish that the Beneficiary satisfies this criterion.

### III. CONCLUSION

The Petitioner did not demonstrate the Beneficiary meets at least three categories of evidence. As such, we need not provide a totality determination to establish whether the Beneficiary has sustained national or international acclaim and is one of the small percentage who has arisen to the very top of the field. *See* section 101(a)(15)(O)(i) of the Act and 8 C.F.R. § 214.2(o)(3)(ii) and (iii).<sup>10</sup> Accordingly, we reserve this issue.<sup>11</sup> Consequently, the Petitioner has not established the Beneficiary's eligibility for the O-1 visa classification as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

**ORDER:** The appeal is dismissed.

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<sup>9</sup> Similarly, the Petitioner also argues that it submitted letters from Dr. A-K-B- and Dr. A-N- relating to the Beneficiary's employment with [ ]. While the letters briefly indicate that Beneficiary's participation in the survey study creation, they do not provide specific information detailing how the Beneficiary's position as a postdoctoral fellow caused her performing in a critical or essential capacity for [ ].

<sup>10</sup> *See also* 2 *USCIS Policy Manual*, *supra*, at M.4(B).

<sup>11</sup> *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).