



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

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

In Re: 24060256

Date: FEB. 06, 2023

Appeal of Vermont Service Center Decision

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

The Petitioner seeks to classify the Beneficiary, a cardiology fellow, as a person of extraordinary ability. To do so, the Petitioner seeks O-1 nonimmigrant classification, 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 that the Petitioner did not demonstrate that the Beneficiary satisfied the initial evidentiary criteria applicable to individuals of extraordinary ability in science: 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. § 103.3.¹ On appeal, the Petitioner submits additional documentation. It asserts that it satisfies at least three of the eight regulatory categories of evidence at 8 C.F.R. § 214.2(o)(3)(iii)(B).

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

¹Appeals filed by representatives must contain a new, properly executed Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative. 8 C.F.R. § 292.4(a). At the time of filing the appeal, the Petitioner provided a copy of a prior Form G-28 for Shane Parker pre-dating the appeal. Because the Petitioner’s appeal does not contain a new, properly executed Form G-28, we consider it to be self-represented.

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).²

II. ANALYSIS

A. Evidentiary Criteria

The Petitioner seeks to employ the Beneficiary as a cardiology fellow in the [redacted] [redacted] in the Department of Medicine. The Beneficiary’s CV indicates that since November 2020 he has been employed as a preventive cardiology fellow at the [redacted] University in [redacted] Maryland. In 2020 the Beneficiary also was employed as a chief resident in the Department of [redacted] at the University of [redacted]. Between 2016 and 2020 he was a postdoctoral researcher and completed his internal medicine residency at the [redacted] Medical Center in [redacted] Pennsylvania.

Because the Petitioner has not indicated or established that the Beneficiary has received a major, internationally recognized award, it must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B)(1)-(8). The Director determined that the Petitioner provided evidence relating to six criteria: awards at 8 C.F.R. § 214.2(o)(3)(iii)(B)(1); published materials at 8 C.F.R. § 214.2(o)(3)(iii)(B)(3); judging at 8 C.F.R. § 214.2(o)(3)(iii)(B)(4); original contributions at 8 C.F.R. § 214.2(o)(3)(iii)(B)(5); scholarly articles at 8 C.F.R. § 214.2(o)(3)(iii)(B)(6); and critical or essential capacity at 8 C.F.R. § 214.2(o)(3)(iii)(B)(7). The Director concluded that the Beneficiary fulfilled only two of those criteria, judging and scholarly articles. Although we agree with the Director that the Beneficiary authored scholarly articles in professional publications, we do not concur with the Director’s finding relating to the judging criterion, discussed later. The Petitioner contends on appeal that the Beneficiary satisfies two additional criteria.³ After reviewing all the submitted evidence, the record does not reflect that the Beneficiary meets the requirements of at least three criteria.

² *See also Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010), in which we held that, “truth is to be determined not by the quantity of evidence alone but by its quality.”

³ The Director determined that the Petitioner did not establish the Beneficiary’s eligibility under the awards criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(1) and the published materials criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(3). On appeal, the

Evidence of the alien's participation on a panel, or individually, as a judge of the work of others in the same or in an allied field of specialization to that for which classification is sought. 8 C.F.R. § 214.2(o)(3)(iii)(B)(4).

As discussed earlier, the Director found that the Petitioner satisfied this criterion. This regulatory criterion requires a beneficiary to show that he has acted as a judge of the work of others in the same or an allied field of specialization. For the reasons outlined below, the record does not reflect that the Petitioner submitted sufficient documentary evidence demonstrating that the Beneficiary meets this criterion, and the Director's determination on this issue will be withdrawn.

The Petitioner asserted that the Beneficiary satisfies this criterion because he "is a reviewer for *International Journal of Cardiology*, *ACC.org*, and *BMJ Case Reports*" and claimed it has provided evidence that the Beneficiary has been invited to review submissions for these journals.⁴ The record before us, however, does not contain documentation establishing the Beneficiary's participation as a judge of the work of others in the same or in an allied field. Rather, the Petitioner submitted invitations to the Beneficiary dated January 2021 and March 2021 from Acc.org to submit Expert Analysis articles on, respectively, the SCORED/SOLOIST-WHF clinical trials and the FIDELIO clinical trial; a letter dated March 2022 to the Beneficiary and his co-authors indicating that their article entitled "[REDACTED]" was published in *Dyslipidemia Clinical Topic Collection* on ACC.org; a screenshot from Acc.org showing several Expert Analyses the Beneficiary co-authored that were published on the website between [REDACTED] 2021 and [REDACTED] 2022; and general information from the websites of the *International Journal of Cardiology* and *BMJ Case Reports*.

Here, the Petitioner did not provide documentary evidence establishing that the Beneficiary reviewed journal submissions for the *International Journal of Cardiology*, *ACC.org*, or *BMJ Case Reports*. Instead, as indicated above, the documentation reflects the Beneficiary authored several articles published in Acc.org and was invited by the *American College of Cardiology* to submit two other articles for publication.

The Petitioner further asserted that the Beneficiary satisfies this criterion because he has served as an instructor at [REDACTED] and has been a member of several teams and projects improving existing medical care, including the ACC diabetes and cardiometabolic disease team, the heart failure care improvement project, and the resident recruitment committee at [REDACTED] Medical Center. Although the Petitioner provided evidence of the Beneficiary's research projects, publications, 2019 nomination as an excellent physician-teacher at [REDACTED] Medical Center, and participation in the [REDACTED] [REDACTED] it has not submitted detailed, corroborated information about the Beneficiary's claimed activities for [REDACTED] University, [REDACTED], and [REDACTED] Medical Center to show that the Beneficiary's involvement amounts to participation as a judge of the work of others.

Petitioner does not contest the Director's specific findings for these criteria. See *Rizk v. Holder*, 629 F.3d 1083, 1091 n.3 (9th Cir. 2011) (finding that issues not raised in a brief are deemed waived).

⁴ In order to meet this criterion, a petitioner must show that the beneficiary has not only been invited to judge the work of others, but also that he actually participated in the judging of the work of others in the same or allied field of specialization. See 2 *USCIS Policy Manual*, M.4(C)(2), <https://www.uscis.gov/policymanual>.

For the reasons discussed above, the Petitioner did not establish that the Beneficiary participated as a judge of the work of others consistent with this regulatory criterion. Accordingly, we withdraw the decision of the Director for this criterion.

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).

In her decision, the Director acknowledged the Petitioner's submission of expert opinion letters discussing the Beneficiary's research, copies of excerpts of his published articles and abstracts, information regarding the journals in which he was published, and evidence that he has been cited by other researchers in their own published work. However, the Director determined that the evidence did not substantiate the Petitioner's claim that the Beneficiary had made original scientific contributions of major significance. On appeal, the Petitioner asserts that the Director did not give sufficient consideration to the evidence submitted in support of this criterion or consider the evidence in its totality.

In order to meet this criterion, a petitioner must establish that not only has the beneficiary made original contributions but that they have been of major significance in the field. For example, a petitioner may show that the beneficiary's contributions 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 maintains that the Beneficiary has made several scientific contributions of major significance in the field, specifically, that he has performed leading research on improvements to preventive cardiology, particularly in the new medical subspecialty of cardiometabolic medicine; he has created academic cardiometabolic programs; and he co-founded in 2021 the [REDACTED] Clinic at [REDACTED] University. Although the Petitioner provided evidence reflecting the originality of the Beneficiary's work through recommendation letters praising him for his contributions, as discussed below, the authors do not provide specific examples of contributions that are indicative of major significance. In general, the letters recount the Beneficiary's research and findings, indicate their publications in journals and presentation at professional conferences, and point to the citation of his work by others. Although they reflect the novelty of the projects on which he worked, they do not show how his research and findings have been considered of such importance and how their impact on the field rises to the level required by this criterion.

The Petitioner submitted several testimonial letters that address the significance of the Beneficiary's work. For instance, [REDACTED] director of clinical research for the [REDACTED] Center for the Prevention of Cardiovascular Disease and director of the center's [REDACTED] clinic, discusses some of the Beneficiary's research projects, including his study on the prescribing of GLP1-RA/SGLT-2 inhibitor therapies by clinical cardiologists in the United States and the future use of sotagliflozin and finerenone in clinical practice; his service as co-investigator of the [REDACTED] Study evaluating the impact of statins on cognitive functions of elderly patients; his work to obtain data of 20 NHLBI funded cardiovascular cohorts through data pooling and harmonization to evaluate the impact of non-traditional tobacco products on cardiovascular outcomes; and his research as a co-investigator on the [REDACTED] Database on the prescription patterns of cardiometabolic therapies by different specialties. In addition, [REDACTED] provides that he,

the Beneficiary, and [redacted] successfully completed a six-part webinar series on the topic of cardiometabolic medicine sponsored by the American College of Cardiology and the Middle East Heart Society. While [redacted] letter describes the Beneficiary's various research projects, he does not show that the impact of his work on the overall field of preventive cardiology research rises to the level of an original contribution of major significance. For example, he does not discuss its specific impact or influence in the field.

In addition, [redacted] asserts that the Beneficiary has great potential "for a unique lasting academic career" and "is uniquely positioned" to be a leader in the new subspecialty of cardiometabolic medicine, but a petitioner cannot file a petition under this classification based on the expectation of the Beneficiary's future eligibility. The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1). The assertion that the Beneficiary's research or clinical results are likely to be influential is not adequate to establish that his findings are already recognized as original contributions of major significance in the field

Further, [redacted] claims that the selection of the Beneficiary's 2019 poster as '[redacted]' by the Society for Cardiovascular Angiography and Interventions (SCAI) shows his research "is not only original but has been significant and important within the field." The record reflects that the Beneficiary's abstract entitled '[redacted]' was among 20 abstracts selected by the SCAI program committee from more than 380 to be highlighted at the conference, by front-row placement and a '[redacted]' ribbon. Particularly significant awards may serve as evidence of the Beneficiary's impact and influence on his field, but the Petitioner has not demonstrated that the Beneficiary's 2019 '[redacted]' abstract award has significance throughout the field as a whole, not just within the confines of the SCAI conference.

Moreover, [redacted] provides that in 2021 he and the Beneficiary co-founded the [redacted] Clinic at [redacted], focused on using medications to help with diabetes control and weight loss, as well as promoting optimal lifestyle modification in patients at high risk of atherosclerotic cardiovascular disease or other adverse cardiovascular outcomes. [redacted] explains that the clinic is primarily fellow-run under his supervision with the Beneficiary as the front-line clinical leader, and that it "has already received an overwhelmingly positive response from our referring physicians and patients." He states that "[a]mong post-doctoral fellows I have trained . . . [the Beneficiary] ranks #1 for his overall clinical performance, for his impact on our clinical practice"

[redacted] director and co-founder of the [redacted] Center for The Prevention of Cardiovascular Disease provides that the Beneficiary "was essential in the formation of the current [redacted] Clinic, which has as its mission the management of obesity and behavioral aspects of prevention as well as the prescription of adjuvant medications for this purpose such as GLP-1 receptor agonists." He states that the clinic "has been spectacularly successful under [the Beneficiary's] leadership, offering critically needed services to our patients." He praises the Beneficiary's abilities as a clinician and educator, such as his ability to teach patients about the use of cardiometabolic drugs, obtain payer approval, schedule follow-up focusing on medication titration and lifestyle improvements, and provide clear communications to the patients' referring primary care clinicians and other cardiovascular specialists. Although the letters of [redacted]

and [] praise the Beneficiary's clinical skills, they do not provide specific examples of contributions that are indicative of major significance or show that the impact of the Beneficiary's contributions extends beyond his own employer at the time.

[] director of the internal medicine program at [] states that the Beneficiary was a member of the center's inaugural internal medicine residency program and praises his work with patients in the emergency, inpatient, and intensive care units. She provides that his work teaching and training medical interns and residents involved organizing a two-month intern boot camp teaching cardiovascular medicine and other topics.

[] a cardiology professor at [] states he has worked with the Beneficiary and that he has demonstrated outstanding organizational skills critical to the effective functioning of a busy cardiometabolic clinic at one of the top cardiology institutes in the United States.

[] a professor of cardiology at the University of [] indicates he collaborated with the Beneficiary on presenting several sessions of the Beneficiary's six part online seminar series on Cardiometabolic Medicine, sponsored by the American College of Cardiology and the Middle East Cardiology Society. He asserts that their article "[]" showing prescription inertia by cardiologists, has been accepted for publication by the *Journal of the American Heart Association* and "will be important to understand and improve patient, physician and health care system behaviors which will hopefully improve outcomes of cardioprotective therapies for these patients worldwide." As stated, the assertion that the Beneficiary's research results are likely to be influential is not adequate to establish that his findings are already recognized as original contributions of major significance in the field.

[] the Beneficiary's postdoctoral research mentor at [] Medical Center, states that as a resident he was an astute clinician who was exceptional in his treatment of patients and was nominated as teacher-of-the-year by the medical students of four medical colleges rotating at [] Medical Center. He collaborated on the [] project and spearheaded several critical cardiovascular research projects. He "showed excellent leadership skills" by working as an active member of the resident selection committee and heart failure care improvement project.

The letters considered above primarily contain attestations of the novelty and utility of the Beneficiary's research studies without providing specific examples of contributions that rise to a level consistent with major significance. USCIS need not accept primarily conclusory statements. *1756, Inc. v. U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.C. Dist. 1990). Overall, none of the expert letters elaborated or discussed whether the Beneficiary's findings have been implemented beyond informing the research of other scientists in the same field, and if so, the extent of their application. While the letters praise the Beneficiary's research as original, valuable, and promising, they have not sufficiently detailed in what ways his studies have already advanced the state of research in his field or elaborated on how the Beneficiary's work has already impacted the wider field beyond the teams of researchers who have directly cited his articles.

The Petitioner further highlights the Beneficiary's publication and citation record from Google Scholar, but this evidence does not show that the impact of his work on the overall field of preventive cardiology research rises to the level of an original contribution of major significance. The Petitioner emphasizes that the Beneficiary has authored 30 articles in professional journals. As one type of evidence of the impact of his work, it provided an April 2022 Google Scholar citation history reflecting 132 cumulative citations to those articles, authored by him between 2016 and 2021. Specifically, the record shows that his three highest cited articles received 49 (*Indian Journal of Psychological Medicine*), 23 (*Respiratory Medicine Case Reports*), and 10 (*Case Reports 2016*) citations, respectively.⁵ While the Beneficiary's citations, both individually and collectively, show that the field has noticed his work, he has not established that such rates of citation are sufficient to demonstrate a level of interest in his field commensurate with contributions "of major significance in the field." In addition, although the Petitioner submits evidence that others in the field may have downloaded and read the Beneficiary's articles, as stated the documentary evidence does not show that his articles have been extensively cited by independent researchers or have otherwise risen to a level of major significance in the field. While the Petitioner submitted corroborating evidence in the form of expert opinion letters, that evidence, for the reasons already discussed, is not sufficient to establish that any of the Beneficiary's research findings, individually or collectively, has made a remarkable impact or influence in his field.

In addition, the Petitioner emphasizes that the Beneficiary's work has been published in highly reputable national journals. It provided information from the websites of several of those journals listing their impact factors. However, the Petitioner has not demonstrated that publication of the Beneficiary's articles in highly ranked journals establishes that the field considers his research to be an original contribution of major significance. Moreover, a publication that bears a high ranking or impact factor is reflective of the publication's overall citation rate. It does not show an author's influence or the impact of research on the field or that every article published in a highly ranked journal automatically indicates a contribution of major significance.

The Petitioner also provided research articles that cited to the Beneficiary's work. A review of those articles, though, does not show the significance of the Beneficiary's research or demonstrate how it has widely impacted the field. For instance, the Petitioner places particular emphasis on a citation to the Beneficiary's work in the 2021 article titled "[redacted]" (*Catheterization and Cardiovascular Interventions*). The document indicates it is official SCAI guidance and shows citation to the Beneficiary's 2020 article titled "[redacted]" (*Circulation: Cardiovascular Interventions*). It does not distinguish or highlight the Beneficiary's written work from the 128 other cited papers. Rather, the document cited his article as a source for suggesting that "[f]or emergent catheterization procedures of patients with a history of prior contrast reactions, the strategy of using an emergency medication preparation followed by immediate catheterization appears to be associated with a very low risk of break-through contrast reactions." The article does not otherwise address the impact of this research or the importance of the Beneficiary's findings in this study, rather, it reflects that similar studies had already been undertaken

⁵ Of the Beneficiary's remaining publications, 17 received between 8 and 1 citations, while 10 publications did not receive any citations.

by other researchers.⁶ This article and others like it acknowledge the Beneficiary's contributions to the advancement of what appears to be an active area of research but are not indications that his work has substantially influenced the field or otherwise rises to the level of an original contribution of major significance in the field.

Moreover, the Petitioner argues that the Beneficiary's research projects, the [REDACTED] and [REDACTED] are being funded, respectively, by the National Institutes of Health (NIH) and the American Heart Association (AHA). Receiving funding to conduct research is not a contribution of major significance in-and-of itself. Rather, the Petitioner must establish that the Beneficiary's receipt of the grants are reflective of his past work's major significance, or that his research conducted with the NIH and AHA grants resulted in a contribution of major significance in the field. The record does not contain evidence that illustrates how the funding reflects the importance of the Beneficiary's contributions, or indicating the research results of the NIH or AHA funding and whether they are majorly significant in the field.

Although the Petitioner provides additional documentation on appeal, including a letter from [REDACTED] of SCAI, and additional letters from [REDACTED] and [REDACTED] we will not consider new eligibility claims or evidence for the first time on appeal. *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 Obaighena*, 19 I&N Dec. 533 (BIA 1988).

Considered together, the evidence consisting of the citations to the Beneficiary's published findings, the citation statistics, and the reference letters from his fellow researchers and other experts, establishes that the Beneficiary has been a productive researcher, and that his published data and findings have been relied upon by others in their own research. It does not demonstrate, however, that the Beneficiary has made a contribution of major significance in the field of preventive cardiology. Therefore, he has not met this criterion.

III. CONCLUSION

The Petitioner established that the Beneficiary met the scholarly articles criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(6), but it did not demonstrate that he meets the criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B)(4) and (5). Although the Petitioner claims the Beneficiary's eligibility for one additional criterion on appeal, relating to employment in a critical or essential capacity at 8 C.F.R. § 214.2(o)(3)(iii)(B)(7), we need not reach this ground because the Petitioner cannot fulfill the initial evidentiary requirement of at least three criteria under 8 C.F.R. § 214.2(o)(3)(iii)(B). We also 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).⁷ Accordingly, we

⁶ Although we discuss a sample article, we have reviewed and considered each one.

⁷ *See also 2 USCIS Policy Manual, supra*, at M.4(B).

reserve these issues.⁸ Consequently, the Petitioner has not demonstrated 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.

⁸ See *INS v. Bagamasbad*, 429 U.S. 24, 25-6 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions 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).