



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

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

In Re: 24017941

Date: JAN. 30, 2023

Appeal of Vermont Service Center Decision

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

The Petitioner, an engineering business, seeks to classify the Beneficiary, a research engineer, 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). 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 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).<sup>1</sup>

## II. ANALYSIS

### A. Evidentiary Criteria

The Beneficiary is a researcher specializing in thermofluidic engineering and bridge erosion. The Petitioner indicates that it has employed the Beneficiary since 2016 as a research engineer on a support services contract for the [REDACTED] Laboratory at the [REDACTED] Research Center [REDACTED] of the U.S. Federal Highway Administration (FHWA) in [REDACTED] Virginia.

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 four criteria: published materials at 8 C.F.R. § 214.2(o)(3)(iii)(B)(3); 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 employment in a critical or essential capacity at 8 C.F.R. § 214.2(o)(3)(iii)(B)(7). The Director concluded that the Beneficiary did not meet any of those criteria. We do not agree with the Director’s finding relating to the scholarly article criterion, discussed later. The Petitioner contends on appeal that the Beneficiary satisfies four criteria. After reviewing all the submitted evidence, the record does not reflect that the Beneficiary meets the requirements of at least three criteria.

*Published material in professional or major trade publications or major media about the alien, relating to the alien’s work in the field for which classification is sought, which shall include the title, date, and author of such published material, and any necessary translation.* 8 C.F.R. § 214.2(o)(3)(iii)(B)(3).

The Petitioner submitted articles authored by the Beneficiary to satisfy this criterion. This evidentiary criterion requires that the published material be “about” the beneficiary and the beneficiary’s work.<sup>2</sup>

<sup>1</sup> *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.”

<sup>2</sup> *See also 2 USCIS Policy Manual*, M.4(C)(2), <https://www.uscis.gov/policymanual> (providing as examples “published material that covers a broader topic but includes a substantial discussion of the beneficiary’s work in the field and mentions the beneficiary in connection to the work” or “focuses solely or primarily on work or research being undertaken by a team

However, articles co-authored by the Beneficiary are not articles about the Beneficiary and his work. Although the articles are about the Beneficiary's research regarding an in-situ scour testing device for determining soil erosion resistance and its testing in the field, the articles are not about him. The regulation requires that the published material to be about the Beneficiary relating to his work rather than self-authored articles reporting his own work. However, while these publications are not relevant to this criterion, they will be considered below as they relate to the significance of the Beneficiary's contributions and scholarly articles.

For these reasons, the Petitioner did not demonstrate that the Beneficiary fulfills 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 order to satisfy this criterion, the Petitioner must establish that not only has the Beneficiary made original contributions, but also that those contributions have been of major significance in the field. The Petitioner reasserts that the Beneficiary has presented his research at several professional international conferences and his work has been published in conference proceedings. Participation in conferences demonstrates that his findings were shared with others and may be acknowledged as original based on their selection for presentation. The record, however, does not show the significance of the Beneficiary's published work or conference presentations, whether the field views them as authoritative, whether they have been extensively referenced or cited by others, or other evidence that they were of "major significance."<sup>3</sup>

The Petitioner further maintains that the Beneficiary has made scientific contributions of major significance in the field, specifically, that he "has been instrumental in creating a new device that can help the United States build better infrastructure long-term and he has contributed to the scholarship surrounding scour and erosion." Although the Petitioner provided evidence reflecting the originality of the Beneficiary's research 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 or support the Petitioner's claim that the Beneficiary has made significant contributions to hydraulic engineering in the U.S. and worldwide. In general, the letters recount the Beneficiary's research and findings. 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. In support of these assertions, the Petitioner submitted several testimonial letters that address the significance of the Beneficiary's work.

For example, in two letters, [redacted] laboratory manager at [redacted] explains that the lab has been conducting research for decades on bridge scour, a flooding impact that results in the erosion of streambed or bank material undermining bridge foundations, and currently works on the FHWA's [redacted] research program, conducting a series of small-scale bridge

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of which the beneficiary is a member, provided that the material mentions the beneficiary in connection with the work, or other evidence in the record documents the beneficiary's significant role in the work or research.")

<sup>3</sup> *Id.* (providing that published research that has provoked widespread commentary on its importance from others working in the field, and documentation that it has been highly cited relative to other works in that field, may be probative of the significance of the beneficiary's contributions to the field of endeavor.)

foundation scour experiments in the lab's Multi-Functional Flume System (MFS). He states that the Beneficiary has conducted outstanding experimental modeling research with the Bridge Engineering Research Team in improving the prediction of flooding-related damages and design guidance for mitigating impacts on bridges and other hydraulic structures. As examples of his specific accomplishments, he provides that the Beneficiary "is the only person specialized in advanced and automated experimentation" and exceeded expectations in assisting the lab's efforts to automate testing procedures by automating control of the lab's MFS to achieve remote operation of small-scale experiments. Further, he analyzed the uncertainties of data collected from the bridge scour experiments, streamlined the data analysis, and contributed to developing scour probability distributions. The Beneficiary is also "using his unique 3D CAD and 3D printing skills to fabricate small scale bridge foundation elements that are tested in the flume."

In addition, in two letters, [ ] the Petitioner's lab manager at [ ] states that the Beneficiary has been performing physical experiments in the MFS that provide the basis for scour design in practice. He also developed the control program with the lab's ABB robotic arm installed on the MFS, which "greatly improved the quality and quantity of the data collection and advanced scientific understanding of scour mechanism." In addition, on the FHWA [ ] program, the Beneficiary worked on the development and deployment of an In-situ Scour Testing Device (ISTD), participated in field tests of the device at multiple bridge sites, and developed the enhanced version of the ISTD, the Portable Scour Testing Device (PSTD). He describes the Beneficiary's achievements as "significant contributions to hydraulic engineering in the U.S. and worldwide."

[ ] the president of the petitioning organization, highlight several of the Beneficiary's additional achievements for the hydraulics lab, including building a research observation stage on top of the MFS and two safety protective systems for the research staff at the FHWA [ ]<sup>4</sup> used while running large-scale concrete or metal structural tests to block dangerous debris. While the letters of [ ] mention the Beneficiary's development of the PSTD, the MFS research observation stage, and safety protective systems employed at [ ] the record does not include evidence showing that those items generated interest beyond the [ ] are being widely used in the hydraulic engineering field, or otherwise constituted a contribution of major significance in the field of hydraulic engineering.

[ ] program manager in the FHWA [ ] Colorado, indicates that he works with the Beneficiary on a project to help in the development and deployment efforts of a new tool used to evaluate the erodibility of soils to improve the analysis of bridge scour, and that the Beneficiary has been involved in several demonstration sites to help the deployment efforts to the state departments of transportation. [ ] a professor of mechanical engineering at California [ ] University, worked with the Beneficiary in 2011 on wind turbine design and praises his abilities both in the laboratory and in the field.

U.S. Citizenship and Immigration Services (USCIS) may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, USCIS is ultimately responsible for making the final determination

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<sup>4</sup> [ ] letter explains that the petitioning organization provides support services to multiple laboratories in the [ ]

regarding an individual's eligibility for the benefit sought. *Id.* As stated, in order to satisfy this criterion, a petitioner must establish not only that the beneficiary has made original contributions but that they have been of major significance in the field. For example, it may support the record with evidence that a beneficiary's contributions have been widely implemented, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance in the field. Demonstrating ability as a skilled hydraulics engineer is not itself a contribution of major significance; rather, the Petitioner must demonstrate that the Beneficiary has impacted the field as a whole. *Cf. Visinscaia v. Beers*, 4 F.Supp.3d 126, 134-35 (D.D.C. 2013) (upholding a finding that a ballroom dancer had not met a similar criterion in the regulations pertaining to immigrants of extraordinary ability because she did not demonstrate her impact in the field as a whole).

Here, the preceding letters of recommendation demonstrate that the Beneficiary is admired for his skills in the field of hydraulic engineering, and that his work on projects has benefited his employers, including the petitioning company, and earned the respect and admiration of those with whom he has collaborated. The authors speak highly of the Beneficiary's work in hydraulic engineering, specifically at the [ ] on the FHWA's [ ] research program. Although the authors indicate that the Beneficiary has performed admirably on the projects to which he was assigned and demonstrate that he is considered an innovator by those with whom he has worked, their letters are not sufficiently detailed to explain how the Beneficiary's research in the field is considered to be an original contribution of major significance; nor does the record include documentary evidence showing the widespread implementation of the Beneficiary's work, that it has been seminal, or that it otherwise equates to an original contribution of major significance in the field.

Further, a petitioner cannot file a petition under this classification based on the expectation of the Beneficiary's future eligibility. For instance, [ ] asserts that the Beneficiary's "exceptional automation and control work . . . will result in a new design methodology." [ ] stated that the Beneficiary's research pertaining to a replacement bridge project in Michigan "potentially saves multiple millions of dollars" in bridge replacement costs, and the Beneficiary's "future work will lead to a multitude of contributions that will propel many fields to new heights." 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 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.

Moreover, the recommendation letters also discussed the Beneficiary's skills, education, and talents. For instance, [ ] states that the Beneficiary "demonstrates an extraordinary balance of professional expertise in programming, automation, experimental analysis and practical skills while managing several robotic systems" and that "it will be nearly impossible to hire a person with similarly unique and extraordinary experimental skills." [ ] opines that the Beneficiary's apprenticeship as an industrial mechanic prior to receiving his mechanical engineering degree "equipped him with a unique set of skills compared to the majority of his peers." However, the letters do not explain how the Beneficiary's possession of unique skills is recognized as an original contribution of major significance in the field. Having a diverse or unusual skillset does not equate to an "original contribution." Rather, the record must be supported by evidence that the Beneficiary has already used those unique skills to make original contributions of major significance in the field.

On appeal the Petitioner provides additional recommendation letters from [REDACTED]. As the Petitioner did not present these documents to the Director in its initial filing or in response to the Director's RFE, we will not consider them in our adjudication of this 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 for any purpose" and that "we will adjudicate the appeal based on the record of proceedings" before the Chief); *see also Matter of Obaigbena*, 19 I&N Dec 533 (BIA 1988).

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

*Evidence of the alien authorship of scholarly articles in the field, in professional journals, or other major media.* 8 C.F.R. § 214.2(o)(3)(iii)(B)(6).

The Director determined that the published materials do not meet this criterion. On appeal, the Petitioner argues that the Director imposed additional conditions not found in the regulations in noting "the lack of a number of times Beneficiary's articles have been cited." We agree that this consideration does not relate to whether the Petitioner has met the plain language of this criterion.<sup>5</sup> Upon review, we withdraw the Director's determination. The record demonstrates that the Beneficiary is the co-author of at least two articles in professional scientific journals: "[REDACTED]"

[REDACTED] in *Scour and Erosion* [REDACTED] and "[REDACTED]" in [REDACTED] *Scour and Erosion* [REDACTED]<sup>6</sup> The evidence satisfies 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)(3) 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.

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<sup>5</sup> The level of recognition received by the Beneficiary's articles would be more relevant to an examination of the totality of the evidence. As discussed above, if the Beneficiary had satisfied at least three criteria, which he did not, then we would have analyzed his publications as part of the totality of the evidence to determine if his successes are sufficient to establish that he has extraordinary ability in the field of endeavor. Although we need not conduct such an analysis in this case, we briefly note that we do not find the record (including the evidence under this criterion) to be indicative of the sustained acclaim and recognition for achievements required for this highly restrictive classification.

<sup>6</sup> Three additional articles did not satisfy this criterion. A 2021 article published in *Proceedings of the Institution of Civil Engineers – Forensic Engineering* did not indicate the Beneficiary's authorship. In addition, we will exclude from consideration any scholarly articles that have yet to be published. The Petitioner indicated that the Beneficiary's manuscript was submitted for publication in *ISSMGE International Journal of Geoengineering Case Histories* and did not provide evidence that his 2021 FHWA research report had been published. As stated, 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).

§ 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).<sup>7</sup> Accordingly, we reserve these issues.<sup>8</sup> 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.

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

<sup>8</sup> *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).