



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

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

In Re: 20520201

Date: MAR. 23, 2022

Motion on Administrative Appeals Office Decision

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

The Petitioner, a medical device company, seeks to classify the Beneficiary as an outstanding professor or researcher “in the fields of Cell Biology and Physiology.” *See* Immigration and Nationality Act (the Act) section 203(b)(1)(B), 8 U.S.C. § 1153(b)(1)(B).

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish, as required, that the Beneficiary is internationally recognized as outstanding in her academic field. We agreed with the Director’s conclusion and dismissed the Petitioner’s appeal. The Petitioner has filed a motion to reconsider our decision.

On motion, the Petitioner contends that we erred in our final merits determination by concluding that the evidence did not establish that the Beneficiary is internationally recognized as an outstanding professor or researcher in the academic field.

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 review, we will dismiss the motion to reconsider.

I. LAW

A motion to reconsider must (1) state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy, and (2) establish that the decision was incorrect based on the evidence in the record of proceedings at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

The statute requires that beneficiaries under this immigrant visa classification should stand apart in their academic area based on international recognition. 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 and demonstrates the beneficiary is recognized internationally within the academic field as outstanding.

Specifically, section 203(b)(1)(B) 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 employer].

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. When a petitioner submits sufficient evidence at the first step, we will then conduct a final merits determination to decide whether the evidence in its totality shows that the beneficiary is internationally recognized as outstanding in his or her academic field.¹ 8 C.F.R. § 204.5(i)(3)(i).

II. ANALYSIS

As mentioned in our appellate decision, which we incorporate here, the Beneficiary received her Ph.D. in Biological and Biomedical Science from [redacted] University in May 2015. From November 2015 until April 2018, she served as a Research and Development Scientist for [redacted]. The Beneficiary has been employed as a Principal Research Scientist with the Petitioner since April 2018.²

In his decision, the Director found that the Beneficiary met two of the evidentiary criteria, thus satisfying the initial evidence requirement, but that the totality of the record did not establish the requisite international recognition in her field. We agreed with the Director that the evidence demonstrated the Beneficiary's service as a judge of the work of others at 8 C.F.R. § 204.5(i)(3)(i)(D) and authorship of scholarly articles at 8 C.F.R. § 204.5(i)(3)(i)(F). As she therefore met two criteria

¹ USCIS has confirmed the applicability of this two-step analysis to evaluate the evidence submitted with the petition to demonstrate eligibility for classification as an outstanding professor or researcher. See 6 *USCIS Policy Manual* F.3(B), <https://www.uscis.gov/policy-manual>.

² In its March 2020 letter accompanying the petition, the Petitioner stated multiple times that the Beneficiary is an outstanding researcher in "the fields of Cell Biology and Physiology." However, on page 21 of its September 2020 statement provided in support of the appeal, and again on page 21 of its October 2021 motion statement, the Petitioner asserts that the Beneficiary's field is "Ciliary Biology." A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. See *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998). The Petitioner must submit evidence to demonstrate that the Beneficiary is recognized internationally as outstanding in the academic field specified in the petition. Academic field means "a body of specialized knowledge offered for study at an accredited U.S. university or institution of higher education." See 8 C.F.R. § 204.5(i)(2). By regulatory definition, a body of specialized knowledge is larger than a very small area of specialization in which only a single course is taught or that is the subject of a very specialized dissertation. For example, it would be acceptable to conclude that a beneficiary is an outstanding professor or researcher in particle physics rather than physics in general, as long as it has been demonstrated that the claimed field is "a body of specialized knowledge offered for study at an accredited United States university or institution of higher education." See 6 *USCIS Policy Manual* F.3(B), <https://www.uscis.gov/policy-manual>. Here, the Petitioner has not provided evidence establishing that "Ciliary Biology" is a body of specialized knowledge offered for study at an accredited U.S. university or institution of higher education.

and satisfied the initial evidence requirements, we considered all the evidence of record in conducting our final merits determination.

On motion, the Petitioner asserts that the Beneficiary “has the necessary qualifications to be an outstanding researcher on a final merits analysis” and qualifies “for the outstanding researcher position at [the Petitioner] far beyond a mere preponderance of the evidence burden.” With respect to the standard of proof in this matter, a petitioner must establish that the beneficiary meets the eligibility requirements of the benefit sought by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). In other words, a petitioner must show that what it claims is “more likely than not” or “probably” true. To determine whether a petitioner has met its burden under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Id.* at 376; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm’r 1989). In our final merits determination, we analyzed the Beneficiary’s accomplishments and weighed the totality of the evidence to evaluate whether the Petitioner had demonstrated, by a preponderance of the evidence, that the Beneficiary’s achievements were sufficient to demonstrate that she has been internationally recognized as outstanding in the field of endeavor. *See* section 203(b)(1)(B)(i) of the Act; 8 C.F.R. § 204.5(i)(3)(i).

The Petitioner contends that we erred in our final merits determination in requiring the Beneficiary to show “international recognition” and that such a requirement “is vague and an impermissible addition to the criteria for evidencing original contributions.” The issue of whether the Beneficiary had fulfilled the requirements of the “original scientific or scholarly research contributions to the academic field” criterion at 8 C.F.R. § 204.5(i)(3)(i)(E) was not relevant to our appellate decision because we agreed with the Director that the Beneficiary had satisfied two other initial criteria, 8 C.F.R. § 204.5(i)(3)(i)(D) and (F). As these two initial criteria were met, we then conducted our final merits determination to decide whether the evidence in its totality shows that the Beneficiary is internationally recognized as outstanding in her academic field. In our final merits determination, we evaluated the claimed original research contributions to determine if they were indicative of the Beneficiary being recognized internationally as outstanding in her academic area. *See* section 203(b)(1)(B)(i) of the Act; 8 C.F.R. § 204.5(i)(3)(i).

In addition, the Petitioner asks for reconsideration due to “the arbitrary and capricious decision based upon the AAO’s claim that [the Beneficiary] failed to establish herself as an international researcher.” Our decision, however, includes no such claim. Instead, we concluded that the Petitioner’s documentation was not sufficient to establish that the Beneficiary has been internationally recognized as an outstanding researcher in her field.

The Petitioner further argues that our appellate decision “failed to define what does constitute an international researcher or why the work and evidence we have provided . . . fail to meet the arbitrary criteria of ‘international.’” In doing so, the AAO has unilaterally imposed novel substantive or evidentiary requirements.” As indicated in our appellate decision, section 203(b)(1)(B) of the Act provides that a beneficiary is an outstanding professor or researcher if she “is recognized internationally as outstanding in a specific academic area.” Furthermore, the implementing regulation at 8 C.F.R. § 204.5(i)(3)(i) calls for “[e]vidence that the professor or researcher is recognized internationally as outstanding in the academic field.” Our decision offered a detailed analysis of the Petitioner’s evidence and explained why the submitted documentation fell short in demonstrating that

the Beneficiary is recognized internationally as outstanding in her academic field. Additionally, while the Petitioner contends that we “unilaterally imposed novel substantive or evidentiary requirements,” the motion does not offer specific examples from our appellate decision.

It is important to note that the controlling purpose of the regulation at 8 C.F.R. § 204.5(i)(3)(i) is to establish a beneficiary’s international recognition, and any evidence submitted to meet these criteria must therefore be to some extent indicative of international recognition. More specifically, outstanding professors and researchers should stand apart in the academic community through eminence and distinction based on international recognition. *Employment-Based Immigrants*, 56 Fed. Reg. 30703, 30705 (proposed July 5, 1991) (enacted 56 Fed. Reg. 60897 (Nov. 29, 1991)). Therefore, to the extent that we agreed with the Director that the evidence satisfied the plain language requirements of two specific evidentiary criteria, and then evaluated whether all the evidence offered by the Petitioner, as part of the entirety of the record, was sufficient to demonstrate the Beneficiary’s recognition as outstanding at the international level, our analysis was in keeping with the statute, regulations, and USCIS policy pertaining to the requested immigrant visa classification.

The Petitioner contends that “strong evidence of [the Beneficiary’s] recognition as a researcher of international recognition can include testimony from scholars regarding the applicant’s contributions and a good number of entries in a citation index that cites the person’s work as authoritative.” The Petitioner points to a July 30, 1992 correspondence memorandum from Lawrence Weinig, Acting Assistant Commissioner, legacy Immigration and Naturalization Service (INS) (now USCIS), discussing what constitutes “solid evidence” for those seeking extraordinary ability classification pursuant to section 203(b)(1)(A) of the Act and outstanding researcher classification pursuant to section 203(b)(1)(B) of the Act. Mr. Weinig issued his correspondence memorandum in response to an inquiry from the Director of the Northern Service Center and makes clear that he is discussing his personal inclinations.³ Mr. Weinig stated that “testimony from other scholars on how the alien has contributed to the academic field” and “entries (particularly a goodly number) in a citation index which cite the alien’s work as authoritative in the field . . . would more than likely be solid pieces of evidence.” Mr. Weinig concluded, however, that “we expect the examiner to evaluate evidence, not simply count it.”⁴

The Petitioner asserts that our “decision to discount [the Beneficiary’s] citations because ‘the Beneficiary’s work must be the focus of the published material, not simply citations of her work’ is arbitrary and capricious.” Our appellate decision, however, included no such statement. Regarding the Beneficiary’s citation evidence, we indicated:

At the time of filing, the Petitioner submitted the Beneficiary’s February 2020 Google Scholar profile showing that her five research articles had received 53 cumulative citations. This Google Scholar information also indicated that the Beneficiary’s two highest cited articles, entitled [REDACTED] (2017) and “[REDACTED]” (2014) each received 31

³ In contrast to official policy memoranda issued to the field, correspondence memoranda issued to a single individual do not constitute official USCIS policy and are not binding on any USCIS officer as they merely indicate the writer’s analysis of an issue.

⁴ The truth is to be determined not by the quantity of evidence alone but by its quality. *See Matter of Chawathe*, 25 I&N Dec. at 376.

[redacted]”; “[redacted]
[redacted]”; “[redacted]
[redacted]”; and “[redacted]
[redacted]” were all self-citations by the Beneficiary’s coauthors. While self-citation is a normal, expected practice, it does not demonstrate the response of independent researchers or otherwise demonstrate international recognition in the field.

The Petitioner asserts that our appellate decision relied “on some arbitrary and unarticulated quota of citations to [the Beneficiary’s] research as somehow needed to provide a ‘reliable gauge’ as to whether [the Beneficiary] meets evidentiary requirements with respect to authorship of scholarly books or articles.” Our decision, however, agreed with the Director that the Beneficiary meets the requirements of the scholarly articles criterion at 8 C.F.R. § 204.5(i)(3)(i)(F).⁵ In the present matter, the Petitioner has not offered citation metrics for the Beneficiary’s academic field showing that the number of citations received by her articles differentiates her published work from that of others in the field or otherwise represents interest at a level consistent with being internationally recognized as outstanding in her field. Furthermore, while the Petitioner contends that “[a] significant body of scholarly authorship by [the Beneficiary] was provided” with the initial filing, it has not demonstrated that her publication record of five scholarly articles since 2011 is indicative of outstanding achievement in her field.

The Petitioner further states: “The AAO asserts, through unknowable criteria, that the [redacted] Institute of Molecular Cell Biology and Genetics in Germany and [redacted] University in [redacted] Japan, as well as the 15 other countries where [the Beneficiary’s] work has been cited and influential are not ‘international.’” The Petitioner, however, misstates our analysis of the evidence. Our appellate decision included no such assertion.

Similar to its appellate submission, the Petitioner’s motion includes a list of the references who offered letters of support for the Beneficiary.⁶ The Petitioner contends that our appellate “decision improperly dismisses the weight of the reference letters written by [the Beneficiary’s] peers in the field.” Specifically, the Petitioner points to information in the letters from [redacted] [redacted]

⁵ As authoring scholarly articles is often inherent to the work of scientific researchers, the citation history or other evidence of the influence of the Beneficiary’s articles can be an indicator to determine the impact and recognition that her work has had on the field. Such an analysis at the final merits determination stage is appropriate pursuant to *Kazarian v. USCIS*, 596 F.3d 1115, 1122 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination).

⁶ The Petitioner again challenges certain statements made by the Director in his analysis of the Beneficiary’s reference letters. For example, the Director’s decision indicated that reference letters alone are “insufficient to establish that the Beneficiary is internationally recognized in the academic field because it appears that these letters have been solicited by the Beneficiary for the sole purpose of supporting her immigrant petition.” In response, the Petitioner argues that the Beneficiary “had to ask her references to provide a reference letter on her behalf as busy world-renowned scholars do not send one another reference letters unprompted.” While the statements in the Beneficiary’s reference letters should be corroborated by evidence in the record, our appellate decision agreed with the Petitioner that such letters should not be discounted simply because they were obtained for the purpose of supporting this petition. Additionally, the Director’s decision stated that “the letters from independent experts . . . appear to be fabricated by the Petitioner, the Beneficiary, or by Counsel.” The Director’s decision provided example quotations from three reference letters that included some similar wording, but the record is not supported by evidence showing that these letters were fabricated. The Petitioner states that it, the Beneficiary, and counsel were wrongfully accused of fabricating the letters. In our appellate decision, we agreed with the Petitioner on this issue and withdrew the Director’s unsubstantiated claim.

[redacted], [redacted] and [redacted] Their statements, however, were analyzed and discussed in pages 6 and 7 of our appellate decision. The Petitioner does not specify what part of our analysis of their letters was based on an incorrect application of law or USCIS policy. The expert testimonials offered by the Petitioner do not contain sufficient information and explanation, nor does the record include adequate corroborating evidence, to show that the Beneficiary's work is viewed by the overall academic field, rather than by the references she selected, as substantially influential or otherwise recognized internationally as outstanding.

The Petitioner's motion to reconsider concludes by stating: "In addition to the items previously provided, we are now including new documents to demonstrate that [the Beneficiary] is well qualified for the offered outstanding researcher position. See enclosed exhibits." The motion, however, was unaccompanied "new documents" or additional "exhibits" relating to the Beneficiary's researcher qualifications.⁷

The Petitioner's arguments on motion do not establish that we erred in concluding that the totality of the evidence does not establish that the Beneficiary is internationally recognized as an outstanding professor or researcher in the academic field. The Petitioner therefore has not met the requirements for a motion to reconsider as it has not shown that we erred in our previous decision based on the record before us on appeal. In addition, the motion to reconsider does not establish that our dismissal of the Petitioner's appeal was based on an incorrect application of law, regulation, or USCIS policy.

III. CONCLUSION

As the Petitioner has not shown that we erred as a matter of law or USCIS policy in dismissing its appeal, we have no basis for reconsideration of our appellate decision. The Petitioner's appeal therefore remains dismissed, and the underlying petition remains denied.

ORDER: The motion to reconsider is dismissed.

⁷ Nor does the motion include an index identifying any new documents or exhibits pertaining to the Beneficiary's qualifications. The October 2021 cover letter lists only "Form G-28," "Form I-290B," and counsel's letter in support of the motion.