



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

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

In Re: 8514498

Date: JULY 21, 2020

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Extraordinary Ability)

The Petitioner, a computer scientist, seeks classification as an alien of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner had satisfied only two of the initial evidentiary criteria, of which she must meet at least three.

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 *de novo* review, we will dismiss the appeal.

**I. LAW**

Section 203(b)(1) of the Act makes visas available to immigrants with extraordinary ability if:

- (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the recognition of his or her achievements in the field through a one-time achievement

(that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then he or she must provide sufficient qualifying documentation that meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010).

## II. ANALYSIS

The Petitioner indicates employment as a data scientist at [REDACTED] in [REDACTED] California. Because the Petitioner has not claimed or established that she has received a major, internationally recognized award, she must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x).

In denying the petition, the Director determined that the Petitioner fulfilled two of the initial evidentiary criteria, judging at 8 C.F.R. § 204.5(h)(3)(iv) and scholarly articles at 8 C.F.R. § 204.5(h)(3)(vi). Although we agree with Director that the Petitioner demonstrated that she authored scholarly articles in professional publications, for the reasons discussed later, we do not concur with the Director's decision relating to the judging criterion.

On appeal, the Petitioner asserts that she meets three additional criteria, discussed below. After reviewing all of the evidence in the record, we conclude that the record does not support a finding that the Petitioner satisfies the requirements of at least three criteria.

### A. Evidentiary Criteria

*Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.* 8 C.F.R. § 204.5(h)(3)(ii).

The Petitioner claims eligibility for this criterion based on memberships with the scholarships committee for the Association for Computing Machinery – Council on Women in Computing (ACM-CWC) and with the program committee for the Association for Computing Machinery – Conference on Bioinformatics, Computational Biology, and Health Informatics (ACM-CBCBHI).<sup>1</sup> In order to satisfy this criterion, the Petitioner must show that membership in the association is based on being

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<sup>1</sup> See USCIS Policy Memorandum PM 602-0005.1, *Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator's Field Manual (AFM) Chapter 22.2, AFM Update AD11-14 7* (Dec. 22, 2010), <https://www.uscis.gov/policymanual/HTML/PolicyManual.html> (indicating that associations may have multiple levels of memberships, and the level of membership must show that the alien was judged by recognized national or international experts as having attained outstanding achievements in the field for which classification is sought).

judged by recognized national or international experts as having outstanding achievements in the field for which classification is sought.<sup>2</sup>

Regarding ACM-CWC's scholarships committee, the Petitioner submitted bylaws reflecting that successful candidates "must have achieved lasting impact on the field of computing, in terms of both technical and leadership contributions." Moreover, "there must be clear and compelling evidence that the individual has significantly influenced the directions of groups and organizations beyond those where he/she was employed." In addition, the Petitioner provided a letter from [REDACTED] for ACM-CWC, who referenced the bylaws, indicated that nomination required by a senior professional member and endorsement from five members, and stated that "[n]ominations and endorsements should address specific accomplishments that demonstrate innovation, originality and creativity; technical leadership resulting in new concepts, products or systems that advance the state of computing; leadership roles providing evidence of outstanding service to ACM and/or the broader computing community." However, the Petitioner did not demonstrate that the scholarships committee's membership requirements are tantamount to "outstanding achievements" consistent with this regulatory criterion. Specifically, the Petitioner did not show that theoretical or practical accomplishments through innovation, originality, and creativity; technical leadership resulting in new concepts, products, or systems advancing computing; or leadership roles to ACM or computing community necessarily constitutes outstanding achievements of its members. Although the scholarships committee requires candidates to attain a certain degree of accomplishments, the Petitioner did not establish that those criteria rise to a level of outstanding achievements.

Moreover, the Petitioner did not demonstrate that national or international experts judge the outstanding achievements for membership.<sup>3</sup> In [REDACTED]' letter, she claimed that "[m]embership decisions are made by a group of 13 prominent names in the CS field" and listed four individuals [REDACTED] [REDACTED], [REDACTED], and [REDACTED] with their positions. The bylaws, however, do not indicate that "[m]embership decisions are made by a group of 13 prominent names." Instead, the bylaws reference the general "Scholarships Committee," such as the "Scholarships Committee evaluates each nomination in [sic] independently of other nominations," the "Scholarships Committee relies on each candidate's nominator and endorsers to provide the information necessary to make an informed evaluation," and "[e]ach nominator will be notified of the committee's decision." Regardless, the Petitioner also submitted profiles for three of the individuals mentioned by [REDACTED] from ACM-CWC's website and a screenshot profile from ieee-vics.org for [REDACTED]. While the profiles contain the individuals' education and employment history, honors and awards, and roles with ACM-CWC, the Petitioner did not establish how the evidence reflects the national or international recognition of the individuals as experts in the field. The Petitioner, for example, did not show the field's acknowledgment of their standings or statuses as experts.

As it relates to ACM-CBCBHI's program committee, the Petitioner references a letter from [REDACTED] [REDACTED] who described the 2018 ACM-CBCBHI Conference as "a premier dissemination forum for interdisciplinary research linking computer science, mathematics, statistics, biology, bioinformatics, biomedical informatics, and health informatics." Moreover, [REDACTED] stated that

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<sup>2</sup> *Id.* at 6. (providing an example of admission to membership in the National Academy of Sciences as a Foreign Associate that requires individuals to be nominated by an academy member, and membership is ultimately granted based upon recognition of the individual's distinguished achievements in original research).

<sup>3</sup> See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8

“[c]ommittee members are responsible to: a) assist Conference Chairs in soliciting abstracts, b) participate in the manuscript review processes, c) serve as a session chair as requested by conference chairs, and d) guide and shape program content.” Moreover, [ ] indicated that that the Petitioner “was extended an invitation for Membership to the ACM-BCB Program Committee because she is an outstanding scientist in this area and has made significant contributions to the area.” Although she described the responsibilities of committee members and justified why she chose the Petitioner, [ ] did not explain whether program committee membership requires outstanding achievements of its members. Moreover, [ ] did not show that recognized national or international experts judge the outstanding achievements for membership. Furthermore, the Petitioner did not provide any bylaws or other supporting evidence demonstrating the requirements for program committee membership. Here, the Petitioner did not establish that outstanding achievements are an essential condition for membership, as judged by recognized national or international experts in the field consistent with this regulatory criterion.

The Petitioner also asserts eligibility for the first time on appeal based on senior membership with the Institute of Electrical and Electronics Engineers (IEEE) and submits an email, dated October 2019, congratulating her on “elevation to the grade of IEEE Senior member.” The record, however, reflects that the Petitioner filed her petition in October 2018, a year prior to her senior IEEE membership. 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. *See* 8 C.F.R. § 103.2(b)(1); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg’l Comm’r 1971). Accordingly, we need not address this eligibility claim on appeal.

For the reasons discussed above, the Petitioner did not establish that she meets this criterion.

*Evidence of the alien’s participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought. 8 C.F.R. § 204.5(h)(3)(iv).*

As discussed earlier, the Director concluded that the Petitioner satisfied this criterion. This regulatory criterion requires an alien to show that she has acted as a judge of the work of others in the same or an allied field of specialization.<sup>4</sup> For the reasons outlined below, the record does not reflect that the Petitioner submitted sufficient documentary evidence demonstrating that she meets this criterion, and the Director’s determination on this issue will be withdrawn.

The Petitioner claimed that “she has been invited to review manuscripts for various scientific conferences within her field to determine if the submissions should be accepted for inclusion/publication.” Moreover, she asserted that “[a]s a Committee Member for various conferences, she was also responsible for reviewing submissions and successfully completed those reviews.” Although she submitted evidence listing her on committees or inviting her to review papers, the Petitioner did not establish that she participated in the manuscript or paper review process. In order to meet this criterion, an alien must show that she has not only been invited to judge the work of

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<sup>4</sup> *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 6-7.

others, but also that she actually participated in the judging of the work of others in the same or allied field of specialization.<sup>5</sup>

Specifically, the Petitioner provided documentation listing her as part of the [redacted] Program Committee” of the [redacted] International Conference on Mobile Ubiquitous Computing, Systems, Services, and Technologies, the [redacted] committee of the [redacted] Celebration, and the [redacted] Joint Summits on Translational Science Reviewers” at the [redacted] Annual Joint Summits on Translational Science. The evidence, however, does not indicate whether she actually reviewed manuscripts or otherwise participated as a judge of the work of others.

Similarly, the Petitioner provided emails inviting her to join committees or to review papers. For example, “[w]e would like to invite you to join the program committee of ACM-BCB [redacted]” “[y]ou were invited to be a part of the review process because of your expertise and background in Machine Learning and AI, and it has been crucial in creating a meaningful, valuable program to be presented at [redacted]” “[t]hank you for volunteering to be a reviewer for the [redacted] 2018 Informatics Summit . . . . Please complete your reviews by Thursday, November 9th,” “[w]e would like to invite you to be a reviewer for the 2017 [redacted] Joint Summits on Translational Science,” “[c]ould you please write a review for me on the following paper submitted to ACM-BCB [redacted]” and “[t]hank you [for] signing up to be an ACM Poster Judge volunteer! . . . We have selected you to judge the first round of the competition.” Although the emails requested her to judge or review, the Petitioner did not demonstrate that she actually completed the judging or review requests.

Likewise, as mentioned under the membership criterion, the Petitioner submitted a letter from [redacted] who indicated that one of the responsibilities of a committee member is to “participate in the manuscript review processes.” However, [redacted] did not demonstrate that the Petitioner actually reviewed manuscripts. Moreover, while [redacted] described why the Petitioner was chosen for the committee, including the claim that she “has reviewed 20+ papers and abstracts and 200 + internationally received scholarship applications,” [redacted] did not explain how she was aware of the Petitioner’s judging experience and did not include detailed, corroborating information such as paper titles, dates, and conferences.

For the reasons discussed above, the Petitioner did not establish that she 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, artistic, athletic, or business-related contributions of major significance in the field.* 8 C.F.R. § 204.5(h)(3)(v).

In order to satisfy the regulation at 8 C.F.R. § 204.5(h)(3)(v), a petitioner must establish that not only has she made original contributions but that they have been of major significance in the field.<sup>6</sup> For example, a petitioner may show that the 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.

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<sup>5</sup> See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8.

<sup>6</sup> See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8-9.

The Petitioner argues that membership on the scholarships committee of the ACM-CWC requires a “lasting impact on the field of computing, in terms of both technical and leadership contributions,” and “there must be clear and compelling evidence that the individual has significantly influenced the directions of groups and organizations beyond those where he/she was employed.” According to [REDACTED], the scholarships committee chose her for membership because the Petitioner “designed an innovative modeling and simulation tool to study [REDACTED] that “can help visualize the [REDACTED] and “can reduce the time and resources used in the wet lab as well as helping predicting the composition of the optimal surface that will yield minimal number [REDACTED] on surface with maximal percentage of [REDACTED],” (emphasis added). Here, [REDACTED] speculates on the potential of the modeling and simulation tool rather than showing how the field already recognizes it as a contribution of major significance. Moreover, although [REDACTED] claimed that “[t]he tool has been used by 5 research labs and has helped reduce the time and resources,” she did not demonstrate that the use of the tool in five research labs rises to a level of major significance consistent with this regulatory criterion.

Further, the Petitioner contends that “her work presented at many academic conferences is further evidence of the significance of her work and it’s [*sic*] impact on the field of computer science,” and “[t]he originality of her work is confirmed by the fact that numerous the numerous [*sic*] prestigious journals and conference proceedings that have published her articles will only accept original research for publication.” While publication or presentation may show originality of work, it does not automatically establish the major significance of it.<sup>7</sup> Furthermore, the Petitioner does not further explain how publication of her articles or presentation of her work at conferences demonstrates that the field views her research to be an original contribution of major significance.<sup>8</sup> Moreover, publications that bear 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 highly ranked journal automatically indicates a contribution of major significance. Publications and presentations are not sufficient under 8 C.F.R. § 204.5(h)(3)(v) absent evidence that they were of “major significance.” See *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009), *aff’d in part*, 596 F.3d 1115. Here, the Petitioner did not establish that publication or presentation alone demonstrates a contribution of major significance in the field.

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<sup>7</sup> See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8 (finding that although funded and published work may be “original,” this fact alone is not sufficient to establish that the work is of major significance).

<sup>8</sup> Although not argued on appeal, the record reflects that the Petitioner submitted screenshots from *Google Scholar* showing the citation of her written and presented work by others with her highest cited article receiving 14 and her highest cited conference proceeding receiving 9. Generally, citations can serve as an indication that the field has taken interest in a petitioner’s research or work. However, the Petitioner did not show that the number of citations for any of her published articles or conference proceedings are commensurate with contributions of major significance. Here, the Petitioner did not articulate the significance or relevance of the citations to her work. For example, she did not demonstrate that these citations are unusually high in her field or how they compare to other articles that the field views as having been majorly significant. See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8-9 (providing an example that peer-reviewed articles in scholarly journals that have provoked widespread commentary or received notice from others working in the field, or entries (particularly a goodly number) in a citation index which cite the individual’s work as authoritative in the field, may be probative of the significance of the person’s contributions to the field of endeavor).

In addition, the Petitioner claims that “industry experts and academics have offered their professional opinions regarding [her] contributions and all conclude that she has made numerous significant contributions to the field that are original.” The record contains reference letters that generally recount the Petitioner’s research and findings and indicate their publications in journals or presentations at conferences. Although they reflect the novelty of her work, they do not sufficiently articulate how her research and findings have been considered of such importance and how their impact on the field rises to the level of major significance required by this criterion. For instance, [REDACTED] [REDACTED] discussed the Petitioner’s “novel computational modeling approach to identify and to counter the effects of [REDACTED] supply chain.”<sup>9</sup> While [REDACTED] stated that “it resulted in a peer-reviewed publication in [an] international conference,” he did not explain the influence in the overall field or even if a [REDACTED] has ever utilized the computer model.<sup>10</sup> Again, publication or presentation alone is not sufficient under 8 C.F.R. § 204.5(h)(3)(v). See *Kazarian v. USCIS*, 580 F.3d at 1036, *aff’d in part*, 596 F.3d at 1115.

Moreover, the letters speculate on the possibility of having an impact at some point in the future, such as: “[w]e believe that models like this have the *potential* to contribute to cancer research,” [i]n *future*, this study *can* also play an important role in building a genome-scale computational model of a cell in the *future*,” “[the Petitioner’s] computational model *can* be used to predict the behavior . . . creating a platform to assist in the development of drugs,” and “such relationships *will* be valuable for determining the right personalized based on patient’s [REDACTED] profile” [REDACTED]; “computational models . . . have the *potential* to contribute to biomedical research,” and “[h]er models *can* also be used to predict behavior” [REDACTED]; “[h]er model *can* help in predicting the composition of an optimal surface with [REDACTED] properties,” and “[t]his shows that in silico experiments [it] *can* significantly reduce the time and cost for wet lab experimentation, and they *can* accelerate research on biomaterials associated infections” [REDACTED]; and “[t]he model *can* help visualize the [REDACTED]’ and “[t]he computational model built *can* reduce the time and resources used in the wet lab” [REDACTED]. (emphasis added). While the Petitioner’s models and work may show promise, the letters do not establish how her work already qualifies as a contribution of major significance in the field, rather than prospective, potential impacts. Here, the significant nature of her work has yet to be determined.

Similarly, [REDACTED] indicated that he selected the Petitioner’s “paper as the most notable paper in ‘Year in Review’ session at the 2018 [REDACTED] annual symposium,” and he “concluded that many oncologists, clinical scientists and testing labs *will* be interested in these results and use them to improve their own reports and standardized documentation.” (emphasis added). Although he stated that the [REDACTED] annual symposium is online suggesting media coverage [REDACTED] speculated on others being interested rather than explaining how the field already views the paper as a contribution of major significance, as well as any widespread attention it received from being online.

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<sup>9</sup> Although we discuss a sampling of letters, we have reviewed and considered each one.

<sup>10</sup> See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8-9; see also *Visinscaia v. Beers*, 4 F. Supp. 3d 126, 134-35 (D.D.C. 2013) (upholding a finding that a ballroom dancer had not met this criterion because she did not corroborate her impact in the field as a whole).

Here, the Petitioner's letters do not contain specific, detailed information explaining the unusual influence or high impact her research or work has had on the overall field.<sup>11</sup> Letters that specifically articulate how a petitioner's contributions are of major significance to the field and its impact on subsequent work add value.<sup>12</sup> On the other hand, letters that lack specifics and use hyperbolic language do not add value, and are not considered to be probative evidence that may form the basis for meeting this criterion.<sup>13</sup> Moreover, USCIS need not accept primarily conclusory statements. *1756, Inc. v. The U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.C. Dist. 1990).

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

*Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.* 8 C.F.R. § 204.5(h)(3)(viii).

The Petitioner contends to meet this criterion based on her roles with the [redacted] University Medical Center [redacted] and ACM-CWC's scholarships committee. As it relates to a leading role, the evidence must establish that a petitioner is or was a leader. A title, with appropriate matching duties, can help to establish if a role is or was, in fact, leading.<sup>14</sup> Regarding a critical role, the evidence must demonstrate that a petitioner has contributed in a way that is of significant importance to the outcome of the organization or establishment's activities. It is not the title of a petitioner's role, but rather the performance in the role that determines whether the role is or was critical.<sup>15</sup>

Regarding [redacted] the Petitioner references a letter from [redacted] who stated that the medical center chose her for its competitive research program at the [redacted] [redacted] "because of her motivation and expertise to solve health related problems through multidisciplinary research and her doctoral work in computational cancer research." In addition, [redacted] indicated that the Petitioner worked on a "NIH [National Institutes of Health] funded [redacted] initiative which seeks to create improved tolls and training programs to harvest the wealth of information contained in biomedical [redacted] in order to advance our understanding of human health and disease," and "helped design and conduct [redacted] studies with clinicians to identify top ranked items in molecular diagnostic reports that aid in clinician decision making and treatment planning."

Likewise, the Petitioner references another letter from [redacted] of [redacted] University, who indicated that the "played a Co-Investigator role in obtaining the [redacted] grant," and "[t]he success and popularity of this system increased more collaborations among researchers and clinicians across institutes and [redacted] leading to additional \$15 Million funding for cancer research." Further, [redacted] stated that the Petitioner "pioneered the design and conducted [redacted]

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<sup>11</sup> Although we discussed a sampling of letters, we have reviewed and considered each one.

<sup>12</sup> See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8-9.

<sup>13</sup> *Id.* at 9. See also *Kazarian*, 580 F.3d at 1036, *aff'd in part*, 596 F.3d at 1115 (holding that letters that repeat the regulatory language but do not explain how an individual's contributions have already influenced the field are insufficient to establish original contributions of major significance in the field).

<sup>14</sup> See USCIS Policy Memorandum PM-602-0005.1, *supra*, at 10.

<sup>15</sup> *Id.*



[redacted] studies with clinicians to identify top ranked items in molecular diagnostic reports that aid in clinician decision making and treatment planning.”

Although the letters point out that the Petitioner published her work in a journal and presented her work at conferences, they did not explain how her role as a co-investigator for a project were leading or critical to [redacted]. The letters, for instance, did not distinguish the Petitioner’s position to the other positions at [redacted] signifying that she performed in a leadership position. In fact, when compared to [redacted] of [redacted] University, and [redacted] director of [redacted] at [redacted], the Petitioner served in a far lesser role as a computational cancer researcher or co-investigator. Moreover, the letters did not demonstrate how presenting work at conferences and publishing in a journal reflects that the Petitioner performed in a critical or essential role for [redacted]. While [redacted] indicated that the Petitioner’s work on the [redacted] initiative eventually led to additional funding, he did not further elaborate and explain how her contributions rose to a level of significant importance to the outcome of [redacted]’s overall activities.<sup>16</sup>

Regarding ACM-CWC’s scholarships committee, the Petitioner references the previously discussed letter from [redacted] who claimed that the Petitioner “plays a critical role in our association.” However, [redacted] did not provide any further explanation to justify her assertion. Instead, [redacted] listed the general responsibilities of committee members without showing how the Petitioner specifically contributed in an essential or critical way to the committee. Further, [redacted] did not articulate how the Petitioner was important to the outcome of the scholarships committee’s activities. Moreover, the Petitioner does not claim, nor does [redacted] letter reflects, that she performed in a leading role for the committee.

Furthermore, although we acknowledge the distinguished reputation of [redacted] the Petitioner did not establish that ACM-CWC’s scholarships committee enjoys such a similar reputation.<sup>17</sup> The Petitioner submits screenshots from ACM’s website relating to goals and background information relating to ACM. Similarly, the screenshots contain mission information about ACM-CWC, including evidence that it offers scholarships. Likewise, the Petitioner provides a brochure promoting ACM-CWC and advertising the opportunity for scholarships. However, the Petitioner did not demonstrate how the evidence shows the reputation of the scholarships committee. In fact, the evidence makes no mention of the scholarships committee. Here, the Petitioner did not establish that the ACM-CWC enjoys an eminent or excellent reputation.

Accordingly, the Petitioner did not show that she meets this criterion.

## B. O-1 Nonimmigrant Status

We note that the record reflects that the Petitioner received O-1 status, a classification reserved for nonimmigrants of extraordinary ability. Although USCIS has approved at least one O-1 nonimmigrant

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<sup>16</sup> See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 10 (stating that letters from individuals with personal knowledge of the significance of a petitioner’s leading or critical role can be particularly helpful in making this determination as long as the letters contain detailed and probative information that specifically addresses how the role for the organization or establishment was leading or critical).

<sup>17</sup> *Id.* at 10-11 (defining *Merriam-Webster’s Dictionary* definition of “distinguished” as marked by eminence, distinction, or excellence).

visa petition filed on behalf of the Petitioner, the prior approval does not preclude USCIS from denying an immigrant visa petition which is adjudicated based on a different standard – statute, regulations, and case law. Many Form I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990). Furthermore, our authority over the USCIS service centers, the office adjudicating the nonimmigrant visa petition, is comparable to the relationship between a court of appeals and a district court. Even if a service center director has approved a nonimmigrant petition on behalf of an individual, we are not bound to follow that finding in the adjudication of another immigration petition. *See La. Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, at \*2 (E.D. La. 2000).

### III. CONCLUSION

The Petitioner has not submitted the required initial evidence of either a one-time achievement or documents that meet at least three of the ten criteria. As a result, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. Nevertheless, we advise that we have reviewed the record in the aggregate, concluding that it does not support a finding that the Petitioner has established the acclaim and recognition required for the classification sought.

The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward the top. USCIS has long held that even athletes performing at the major league level do not automatically meet the “extraordinary ability” standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm’r 1994). Here, the Petitioner has not shown that the significance of her work is indicative of the required sustained national or international acclaim or that it is consistent with a “career of acclaimed work in the field” as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate that the Petitioner has garnered national or international acclaim in the field, and she is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2). Although the Petitioner has conducted research and authored scholarly articles, the record does not contain sufficient evidence establishing that she is among the upper echelon in her field.

For the reasons discussed above, the Petitioner has not demonstrated her eligibility 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.