U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 42988558

Date: JUNE 3, 2026

Appeal of U.S. Citizenship and Immigration Services (USCIS) Decision

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

The Petitioner, a neuroscientist, 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 Petitioner filed the petition in December 2023. USCIS denied the petition in September 2024. The Petitioner filed an appeal, which USCIS treated as a motion to reopen under 8 C.F.R. § 103.3(a)(2)(iii). USCIS denied the petition for a second time in February 2026, concluding that although the record established that the Petitioner satisfied the initial evidentiary requirements, it did not establish, as required, that the Petitioner has sustained national or international acclaim and is an alien in the small percentage at the very top of the field. The matter is now before us on appeal under 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

Section 203(b)(1)(A) of the Act makes immigrant visas available to aliens with 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. A petitioner must establish that the alien seeks to enter the United States to continue work in the area of extraordinary ability, and that their entry into the United States will substantially benefit the United States. The term "extraordinary ability" refers only to those aliens 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 international recognition of an alien's achievements in the field through a one-time achievement in the form of a major, internationally recognized award. Or the petitioner can

submit evidence that meets at least three of the ten criteria 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. If those standards do not readily apply to the alien's occupation, then the regulation at 8 C.F.R. § 204.5(h)(4) allows the submission of comparable evidence.

Once a petitioner has met the initial evidence requirements, the next step is a final merits determination, in which we assess whether the record shows sustained national or international acclaim and demonstrates that the alien 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) (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); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

II. ANALYSIS

The Petitioner describes her research as "furthering human understanding of brain connectivity and plasticity." The Petitioner earned a doctorate in Belgium and then performed postdoctoral research in Chicago as a J-1 nonimmigrant exchange visitor from 2016 to 2022, first at [redacted] and then at the [redacted] In 2023, the Petitioner began working as a senior neuroscience engineer for [redacted] a startup company in [redacted] Colorado, first in H-1B nonimmigrant status and then as an O-1A alien of extraordinary ability in the sciences, arts, education, business, or athletics.[1] She stated that the company "is developing state-of-the-art tools for monitoring live brain activity at cellular resolution."

Because the Petitioner has not indicated or shown that she 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). The Petitioner claimed to have satisfied three of these criteria, pertaining to participation as a judge of the work of others; original contributions of major significance; and authorship of scholarly articles.

USCIS determined that the Petitioner had satisfied the three claimed criteria, but concluded that she had not demonstrated, by a preponderance of the evidence, sustained national or international acclaim and that she is one of the small percentage at the very top of the field of endeavor, whose achievements have been recognized in the field through extensive documentation.

A final merits determination involves analyzing a petitioner's accomplishments and weighing the totality of the evidence to determine if their successes are sufficient to demonstrate that they have extraordinary ability in the field of endeavor. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20. *See, generally*, 6 *USCIS Policy Manual* F.2(B)(2), https://www.uscis.gov/policy-manual (stating that USCIS officers should then evaluate the evidence together when considering the petition in its entirety to determine if the petitioner has established, by a preponderance of the evidence, the required high level of expertise for the immigrant classification). In this matter, we agree with the determination that the Petitioner has not established eligibility.

[1] USCIS automatically revoked the approval of the O-1A nonimmigrant petition in January 2025, after [redacted] notified USCIS that it no longer employed the alien. *See* 8 C.F.R. § 214.2(o)(8)(ii).

On appeal, the Petitioner states that she "has already been awarded an O-1A approval by USCIS previously. . . . [T]he officer in this case never provided the required discussion as to why [the Petitioner] was able to meet the O-1A statutory and regulatory requirements but not the EB-1A requirements. We believe this point alone required the decision to be overturned."

The *USCIS Policy Manual* does not *require* a discussion of prior O-1A approval, but strongly recommends that "officers issuing denials in such cases should provide a brief discussion as to why, notwithstanding the previous O-1 nonimmigrant visa petition approval, the petitioner has failed to meet its burden to establish that the beneficiary is eligible for classification as an immigrant with extraordinary ability." *See, generally*, 6 *USCIS Policy Manual*, *supra*, at F.2(B)(3). Each petition is separate and independent and must be adjudicated on its own merits, under the corresponding statutory and regulatory provisions. *Id.* In this case, USCIS explained in several different ways how the record does not support a finding of eligibility. The lack of discussion of the Petitioner's prior O-1A status does not, by itself, wholly undermine the denial decision.

On appeal, the Petitioner cites a district court decision, *Mukherji v. Miller*, No. 4:24-CV-3170 (D. Neb. Jan. 28, 2026), in which the court objected to USCIS' reliance on *Kazarian* to justify its use of the final merits determination as the basis for denying a petition. The Petitioner observes that her petition was adjudicated in Nebraska, under the ruling court's jurisdiction.

We disagree with the Petitioner's reliance on this non-precedent decision. In contrast to the precedential authority of the case law of a United States circuit court, we are not bound to follow a decision of a United States district court, even in cases arising within the same district. *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993).

Moreover, while we may consider the court's reasoning when it is properly before us, unpublished opinions are not considered binding precedent. *See Suchite-Salguero v. Att'y Gen. United States*, 147 F.4th 355, 359-60 (3d Cir. 2025) ("[W]e have cautioned over and over again that non-precedential opinions carry little to no weight for future cases."); *Wang v. Holder*, 569 F.3d 531, 538 n.5 (5th Cir. 2009); *cf. Matter of K-S-*, 20 I&N Dec. at 719 (considering the reasoning of district court decisions).

The two-step adjudication process is an interpretive rule that does not violate the Administrative Procedure Act, nor is it a legislative rule. *Nagaiah v. Allen*, 784 F. Supp. 3d at 810; *Agrawal v. Miller*, No. 4:24CV3143, 2025 WL 2879217, at *12 (D. Neb. Sept. 12, 2025); *Etsy, Inc. v. Jaddou*, No. 4:22CV3022, 2023 WL 3689555, at *23 (D. Neb. May 25, 2023) (citing *Perez v. Mortg. Bankers Ass'n*, 575 U.S. 92, 96 (2015).

The final merits determination considers the totality of the evidence in the broader context of sustained national or international acclaim as required by the statute. Issues that "are not relevant to the antecedent procedural question of whether the petitioner has provided at least three types of evidence" "might be relevant to the final merits determination of whether a petitioner is at the very top of his or her field of endeavor." *Kazarian v. USCIS*, 596 F.3d at 1121. Considerations that might impermissibly amount to "a novel evidentiary requirement" within the narrow confines of an initial criterion nevertheless "might be relevant to a final merits determination." *Id.*

The final merits determination hinges on whether the Petitioner has established sustained national or international acclaim and has reached the small percentage at the very top of the field. This determination is related to, but separate from, the antecedent question of whether the Petitioner has satisfied at least three of the initial criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x).

Therefore, we review the record with an eye toward the broader issue of sustained acclaim rather than the narrower focus of those initial criteria.

On appeal, the Petitioner argues that USCIS did not give sufficient weight to the citations of the Petitioner's work, articles discussing that work, and letters attesting to the significance of her research. But in the denial notice, USCIS discussed the Petitioner's citations and selected letters in the record.

USCIS acknowledged that the Petitioner's scholarly articles "have been cited 600 times overall." The Petitioner also submitted letters from various individuals in her field, describing her work and explaining its significance. USCIS concluded that the evidence relating to the Petitioner's research satisfies the criteria at 8 C.F.R. § 204.5(h)(3)(vi) and (v), relating, respectively, to authorship of scholarly articles and original contributions of major significance. But USCIS concluded that the Petitioner had not shown that she has "maintained . . . a record of sustained national or international acclaim," and "did not provide evidence showing how [her] articles advanced the field and set [her] apart [from] others in the field." USCIS noted that others in the Petitioner's field "have garnered citations numbered well in the thousands."

The Petitioner asserts that researchers with lower citation rates have been found to qualify as aliens of extraordinary ability. But citation rates alone cannot establish eligibility.

The Petitioner argues on appeal that, given the acknowledged significance of her highly-cited publications, USCIS contradicted itself by concluding that the Petitioner had not established the necessary acclaim and recognition. But there is no inherent contradiction. Contributions of major significance relate to one of several evidentiary criteria; they do not suffice, by themselves, to establish eligibility as an alien of extraordinary ability. Likewise, the Petitioner has emphasized the reputations of some of the institutions where she has trained and worked, but she must establish her own sustained acclaim.

Letters in the record describe the Petitioner's work in technical detail and explain how the Petitioner has contributed to knowledge in her field. But the letters do not establish that the Petitioner's work has attracted sustained attention throughout her field, or that it has proven to be influential at a level commensurate with sustained national or international acclaim.

Letters of support should be corroborated by documentary evidence in the record. *See*, *generally*, 6 *USCIS Policy Manual*, *supra*, at F.2(B)(3). It is generally expected that one whose accomplishments have garnered sustained national or international acclaim would have received recognition for their accomplishments well beyond the circle of their personal and professional acquaintances. *Id.* The writers who provided letters on the Petitioner's behalf hold her in high regard, but the record lacks sufficient evidence to show that this opinion represents a more widely-held consensus in the field.

Materials submitted as showing media coverage of the Petitioner's research appear to be, or to be derived from, press releases from the research institutions themselves. The Petitioner did not show that this initial

publicity resulted in follow-up coverage or other sustained media attention. The Petitioner herself is not the focus of these articles; her name appears only in the author credits of journal articles mentioned in the stories. Also, all of these materials date from 2016 and 2017, and they do not show that the Petitioner's work has continued to attract even this level of public commentary.

In discussing the Petitioner's scholarly articles, USCIS observed that her most recent article was published in 2019, four years before she filed the petition. Her most recent published articles derive from research she undertook at [redacted] between 2016 and 2018. The record does not show that the Petitioner's postdoctoral work at the [redacted] from 2018 to 2022, or her subsequent employment at [redacted] have yielded any published research. The Petitioner has not explained how this lengthy gap in her publication record is consistent with sustained acclaim.

Likewise, the Petitioner's *curriculum vitae* lists "Talks & Poster Presentations" from 2010 to 2017, followed by a four-and-a-half year gap and then four talks or poster presentations in 2022-2023. A *curriculum vitae* in the Petitioner's initial 2023 submission refers to an "[a]rticle in preparation," deriving from her work at the [redacted] but subsequent submissions do not show that this article has been published in the intervening years.

In response to an October 2025 notice of intent to deny the petition, the Petitioner submitted, as evidence "that her acclaim continues actively through October 2025," materials showing that she recently peer-reviewed manuscripts and "participated in multiple specialized professional seminars." The submitted evidence does not show that the Petitioner continues to actively engage in research, nor does it establish that the Petitioner remains a recognized figure at the very high level required to qualify for the classification she seeks. The Petitioner submitted a list of recent and upcoming seminars. Such a list does not indicate that the Petitioner presented any research at the events.[2]

The Petitioner has not explained how this significant gap in her research output is consistent with the *sustained* acclaim that the statute and regulations demand.

The record shows that the Petitioner was involved in consequential research as a graduate student in Belgium and as a postdoctoral researcher in [redacted], but the record does not demonstrate that this work has resulted in the individual recognition and acclaim that the statute and regulations require. The record also does not indicate that the Petitioner has continued to conduct research and engage in related activities that would earn her the ongoing recognition necessary to show sustained acclaim.

III. CONCLUSION

The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than those progressing toward the top. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994) (concluding that even major league level athletes do not automatically meet the statutory standards for classification as an individual of "extraordinary ability"); *Visinscaia*, 4 F. Supp. 3d at 131 (internal quotation marks omitted) (finding that the extraordinary ability designation is "extremely restrictive by design"); *Hamal v. Dep't of Homeland Sec.*, No. 19-cv-2534, 2021 WL 2338316, at *5 (D.D.C. June 8, 2021), *aff'd*, 2023 WL 1156801 (D.C. Cir. Jan. 31, 2023)

[2] By itself, the list does not directly document even her attendance at the seminars.

(determining that EB-1 visas are "reserved for a very small percentage of prospective immigrants"); *Lapteva v. Schuurmans*, No. 8:24CV83, 2025 WL 815087, at *1 (D. Neb. Mar. 10, 2025) (stating that EB-1 visas are intended to be available to only an exceedingly small amount of individuals with extraordinary ability); *see also Hamal v. Dep't of Homeland Sec.*, No. 19-cv-2534, 2020 WL 2934954, at *1 (D.D.C. June 3, 2020) (citing *Kazarian,* 596 at 1122 (upholding denial of petition of a published theoretical physicist specializing in non-Einsteinian theories of gravitation) (stating that "[c]ourts have found that even highly accomplished individuals fail to win this designation")); *Lee v. Ziglar*, 237 F. Supp. 2d 914, 918 (N.D. 2002) (finding that "arguably one of the most famous baseball players in Korean history" did not qualify for visa as a baseball coach).

Here, the Petitioner has not shown a degree of recognition of her work that rises to the level of sustained national or international acclaim and demonstrates 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 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).

The Petitioner has not demonstrated eligibility as an alien of extraordinary ability. We will therefore dismiss the appeal.

ORDER: The appeal is dismissed.

NOTICE: This constitutes the final decision in this matter. The filing of a motion will not postpone the effect of the decision. 8 C.F.R. § 103.5(a)(1)(iv). Aliens who are not lawfully present, or who are otherwise inadmissible or deportable, may be subject to the commencement of removal proceedings under section 240 of the Act through the issuance of a Form I-862, Notice to Appear. Those proceedings may result in their removal from the United States and possible ineligibility for future visas or other immigration benefits.