SUPREME COURT OF THE UNITED STATES

No. 97–1943

KAREN SUTTON AND KIMBERLY HINTON, PETITIONERS *v.* UNITED AIR LINES, INC.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

[June 22, 1999]

JUSTICE O'CONNOR delivered the opinion of the Court.

The Americans with Disabilities Act of 1990 (ADA or Act), 104 Stat. 328, 42 U. S. C. §12101 *et seq.*, prohibits certain employers from discriminating against individuals on the basis of their disabilities. See §12112(a). Petitioners challenge the dismissal of their ADA action for failure to state a claim upon which relief can be granted. We conclude that the complaint was properly dismissed. In reaching that result, we hold that the determination of whether an individual is disabled should be made with reference to measures that mitigate the individual's impairment, including, in this instance, eyeglasses and contact lenses. In addition, we hold that petitioners failed to allege properly that respondent "regarded" them as having a disability within the meaning of the ADA.

I

Petitioners' amended complaint was dismissed for failure to state a claim upon which relief could be granted. See Fed. Rule Civ. Proc. 12(b)(6). Accordingly, we accept the allegations contained in their complaint as true for purposes of this case. See *United States* v. *Gaubert*, 499

U. S. 315, 327 (1991).

Petitioners are twin sisters, both of whom have severe myopia. Each petitioner's uncorrected visual acuity is 20/200 or worse in her right eye and 20/400 or worse in her left eye, but "[w]ith the use of corrective lenses, each . . . has vision that is 20/20 or better." App. 23. Consequently, without corrective lenses, each "effectively cannot see to conduct numerous activities such as driving a vehicle, watching television or shopping in public stores," *id.*, at 24, but with corrective measures, such as glasses or contact lenses, both "function identically to individuals without a similar impairment," *ibid.*

In 1992, petitioners applied to respondent for employment as commercial airline pilots. They met respondent's basic age, education, experience, and FAA certification qualifications. After submitting their applications for employment, both petitioners were invited by respondent to an interview and to flight simulator tests. Both were told during their interviews, however, that a mistake had been made in inviting them to interview because petitioners did not meet respondent's minimum vision requirement, which was uncorrected visual acuity of 20/100 or better. Due to their failure to meet this requirement, petitioners' interviews were terminated, and neither was offered a pilot position.

In light of respondent's proffered reason for rejecting them, petitioners filed a charge of disability discrimination under the ADA with the Equal Employment Opportunity Commission (EEOC). After receiving a right to sue letter, petitioners filed suit in the United States District Court for the District of Colorado, alleging that respondent had discriminated against them "on the basis of their disability, or because [respondent] regarded [petitioners] as having a disability" in violation of the ADA. App. 26. Specifically, petitioners alleged that due to their severe myopia they actually have a substantially limiting im-

pairment or are regarded as having such an impairment, see *id.*, at 23–26, and are thus disabled under the Act.

The District Court dismissed petitioners' complaint for failure to state a claim upon which relief could be granted. See Civ. A. No. 96–5–121 (Aug. 28, 1996), App. to Pet. for Cert. A–27. Because petitioners could fully correct their visual impairments, the court held that they were not actually substantially limited in any major life activity and thus had not stated a claim that they were disabled within the meaning of the ADA. *Id.*, at A–32 to A–36. The court also determined that petitioners had not made allegations sufficient to support their claim that they were "regarded" by the respondent as having an impairment that substantially limits a major life activity. *Id.*, at A–36 to A–37. The court observed that "[t]he statutory reference to a substantial limitation indicates . . . that an employer regards an employee as handicapped in his or her ability to work by finding the employee's impairment to foreclose generally the type of employment involved." *Id.*, at A36 to A37. But petitioners had alleged only that respondent regarded them as unable to satisfy the requirements of a particular job, global airline pilot. Consequently, the court held that petitioners had not stated a claim that they were regarded as substantially limited in the major life activity of working. Employing similar logic, the Court of Appeals for the Tenth Circuit affirmed the District Court's judgment. 130 F. 3d 893 (1997).

The Tenth Circuit's decision is in tension with the decisions of other Courts of Appeals. See, *e.g.*, *Bartlett* v. *New York State Bd. of Law Examiners*, 156 F. 3d 321, 329 (CA2 1998) (holding self-accommodations cannot be considered when determining a disability), cert. pending, No. 98–1285; *Baert* v. *Euclid Beverage, Ltd.*, 149 F. 3d 626, 629–630 (CA7 1998) (holding disabilities should be determined without reference to mitigating measures); *Matczak* v. *Frankford Candy & Chocolate Co.*, 136 F. 3d 933, 937–938

(CA3 1997) (same); *Arnold* v. *United Parcel Service, Inc.*, 136 F. 3d 854, 859–866 (CA1 1998) (same); see also *Washington* v. *HCA Health Servs. of Texas, Inc.*, 152 F. 3d 464, 470–471 (CA5 1998) (holding that only some impairments should be evaluated in their uncorrected state), cert. pending, No. 98–1365. We granted certiorari, 525 U. S. ___ (1999), and now affirm.

II

The ADA prohibits discrimination by covered entities, including private employers, against qualified individuals with a disability. Specifically, it provides that no covered employer "shall discriminate against a qualified individual with a disability because of the disability of such individual in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment." 42 U. S. C. §12112(a); see also §12111(2) ("The term 'covered entity' means an employer, employment agency, labor organization, or joint labor-management committee"). A "qualified individual with a disability" is identified as "an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires." §12111(8). In turn, a "disability" is defined as:

> "(A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual;
>
> "(B) a record of such an impairment; or
>
> "(C) being regarded as having such an impairment." §12102(2).

Accordingly, to fall within this definition one must have an actual disability (subsection (A)), have a record of a disability (subsection (B)), or be regarded as having one

(subsection (C)).

The parties agree that the authority to issue regulations to implement the Act is split primarily among three Government agencies. According to the parties, the EEOC has authority to issue regulations to carry out the employment provisions in Title I of the ADA, §§12111–12117, pursuant to §12116 ("Not later than 1 year after [the date of enactment of this Act], the Commission shall issue regulations in an accessible format to carry out this subchapter in accordance with subchapter II of chapter 5 of title 5"). The Attorney General is granted authority to issue regulations with respect to Title II, subtitle A, §§12131–12134, which relates to public services. See §12134 ("Not later than 1 year after [the date of enactment of this Act], the Attorney General shall promulgate regulations in an accessible format that implement this part"). Finally, the Secretary of Transportation has authority to issue regulations pertaining to the transportation provisions of Titles II and III. See §12149(a) ("Not later than 1 year after [the date of enactment of this Act], the Secretary of Transportation shall issue regulations, in an accessible format, necessary for carrying out this subpart (other than section 12143 of this title)"); §12164 (substantially same); §12186(a)(1) (substantially same); §12143(b) ("Not later than one year after [the date of enactment of this Act], the Secretary shall issue final regulations to carry out this section"). See also §12204 (granting authority to the Architectural and Transportation Barriers Compliance Board to issue minimum guidelines to supplement the existing Minimum Guidelines and Requirements for Accessible Design). Moreover, each of these agencies is authorized to offer technical assistance regarding the provisions they administer. See §12206(c)(1) ("Each Federal agency that has responsibility under paragraph (2) for implementing this chapter may render technical assistance to individuals and institutions that have rights or duties

under the respective subchapter or subchapters of this chapter for which such agency has responsibility").

No agency, however, has been given authority to issue regulations implementing the generally applicable provisions of the ADA, see §§12101–12102, which fall outside Titles I-V. Most notably, no agency has been delegated authority to interpret the term "disability." §12102(2). JUSTICE BREYER'S contrary, imaginative interpretation of the Act's delegation provisions, see *post*, at 1–2 (dissenting opinion), is belied by the terms and structure of the ADA. The EEOC has, nonetheless, issued regulations to provide additional guidance regarding the proper interpretation of this term. After restating the definition of disability given in the statute, see 29 CFR §1630.2(g) (1998), the EEOC regulations define the three elements of disability: (1) "physical or mental impairment," (2) "substantially limits," and (3) "major life activities." See *id.*, at §§1630.2(h)–(j). Under the regulations, a "physical impairment" includes "[a]ny physiological disorder, or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine." §1630.2(h)(1). The term "substantially limits" means, among other things, "[u]nable to perform a major life activity that the average person in the general population can perform;" or "[s]ignificantly restricted as to the condition, manner or duration under which an individual can perform a particular major life activity as compared to the condition, manner, or duration under which the average person in the general population can perform that same major life activity." §1630.2(j). Finally, "[m]ajor [l]ife [a]ctivities means functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working." §1630.2(i).

Because both parties accept these regulations as valid, and determining their validity is not necessary to decide this case, we have no occasion to consider what deference they are due, if any.

The agencies have also issued interpretive guidelines to aid in the implementation of their regulations. For instance, at the time that it promulgated the above regulations, the EEOC issued an "Interpretive Guidance," which provides that "[t]he determination of whether an individual is substantially limited in a major life activity must be made on a case by case basis, without regard to mitigating measures such as medicines, or assistive or prosthetic devices." 29 CFR pt. 1630, App. §1630.2(j) (1998) (describing §1630.2(j)). The Department of Justice has issued a similar guideline. See 28 CFR pt. 35, App. A, §35.104 ("The question of whether a person has a disability should be assessed without regard to the availability of mitigating measures, such as reasonable modification or auxiliary aids and services"); pt. 36, App. B, §36.104 (same). Although the parties dispute the persuasive force of these interpretive guidelines, we have no need in this case to decide what deference is due.

III

With this statutory and regulatory framework in mind, we turn first to the question whether petitioners have stated a claim under subsection (A) of the disability definition, that is, whether they have alleged that they possess a physical impairment that substantially limits them in one or more major life activities. See 42 U. S. C. §12102(2)(A). Because petitioners allege that with corrective measures their vision "is 20/20 or better," see App. 23, they are not actually disabled within the meaning of the Act if the "disability" determination is made with reference to these measures. Consequently, with respect to subsection (A) of the disability definition, our decision turns on whether

disability is to be determined with or without reference to corrective measures.

Petitioners maintain that whether an impairment is substantially limiting should be determined without regard to corrective measures. They argue that, because the ADA does not directly address the question at hand, the Court should defer to the agency interpretations of the statute, which are embodied in the agency guidelines issued by the EEOC and the Department of Justice. These guidelines specifically direct that the determination of whether an individual is substantially limited in a major life activity be made without regard to mitigating measures. See 29 CFR pt. 1630, App. §1630.2(j); 28 CFR pt. 35, App. A, §35.104 (1998); 28 CFR pt. 36, App. B, §36.104.

Respondent, in turn, maintains that an impairment does not substantially limit a major life activity if it is corrected. It argues that the Court should not defer to the agency guidelines cited by petitioners because the guidelines conflict with the plain meaning of the ADA. The phrase "substantially limits one or more major life activities," it explains, requires that the substantial limitations actually and presently exist. Moreover, respondent argues, disregarding mitigating measures taken by an individual defies the statutory command to examine the effect of the impairment on the major life activities "of such individual." And even if the statute is ambiguous, respondent claims, the guidelines' directive to ignore mitigating measures is not reasonable, and thus this Court should not defer to it.

We conclude that respondent is correct that the approach adopted by the agency guidelines– that persons are to be evaluated in their hypothetical uncorrected state– is an impermissible interpretation of the ADA. Looking at the Act as a whole, it is apparent that if a person is taking measures to correct for, or mitigate, a

physical or mental impairment, the effects of those measures– both positive and negative– must be taken into account when judging whether that person is "substantially limited" in a major life activity and thus "disabled" under the Act. The dissent relies on the legislative history of the ADA for the contrary proposition that individuals should be examined in their uncorrected state. See *post*, at 10–18 (opinion of STEVENS, J.). Because we decide that, by its terms, the ADA cannot be read in this manner, we have no reason to consider the ADA's legislative history.

Three separate provisions of the ADA, read in concert, lead us to this conclusion. The Act defines a "disability" as "a physical or mental impairment that *substantially limits* one or more of the major life activities" of an individual. §12102(2)(A) (emphasis added). Because the phrase "substantially limits" appears in the Act in the present indicative verb form, we think the language is properly read as requiring that a person be presently– not potentially or hypothetically– substantially limited in order to demonstrate a disability. A "disability" exists only where an impairment "substantially limits" a major life activity, not where it "might," "could," or "would" be substantially limiting if mitigating measures were not taken. A person whose physical or mental impairment is corrected by medication or other measures does not have an impairment that presently "substantially limits" a major life activity. To be sure, a person whose physical or mental impairment is corrected by mitigating measures still has an impairment, but if the impairment is corrected it does not "substantially limi[t]" a major life activity.

The definition of disability also requires that disabilities be evaluated "with respect to an individual" and be determined based on whether an impairment substantially limits the "major life activities of such individual." §12102(2). Thus, whether a person has a disability under the ADA is an individualized inquiry. See *Bragdon* v.

Abbott, 524 U. S. 624, ____ (1998) (declining to consider whether HIV infection is a *per se* disability under the ADA); 29 CFR pt. 1630, App. §1630.2(j) ("The determination of whether an individual has a disability is not necessarily based on the name or diagnosis of the impairment the person has, but rather on the effect of that impairment on the life of the individual").

The agency guidelines' directive that persons be judged in their uncorrected or unmitigated state runs directly counter to the individualized inquiry mandated by the ADA. The agency approach would often require courts and employers to speculate about a person's condition and would, in many cases, force them to make a disability determination based on general information about how an uncorrected impairment usually affects individuals, rather than on the individual's actual condition. For instance, under this view, courts would almost certainly find all diabetics to be disabled, because if they failed to monitor their blood sugar levels and administer insulin, they would almost certainly be substantially limited in one or more major life activities. A diabetic whose illness does not impair his or her daily activities would therefore be considered disabled simply because he or she has diabetes. Thus, the guidelines approach would create a system in which persons often must be treated as members of a group of people with similar impairments, rather than as individuals. This is contrary to both the letter and the spirit of the ADA.

The guidelines approach could also lead to the anomalous result that in determining whether an individual is disabled, courts and employers could not consider any negative side effects suffered by an individual resulting from the use of mitigating measures, even when those side effects are very severe. See, *e.g.*, Johnson, Antipsychotics: Pros and Cons of Antipsychotics, RN (Aug. 1997) (noting that antipsychotic drugs can cause a variety of adverse

effects, including neuroleptic malignant syndrome and painful seizures); Liver Risk Warning Added to Parkinson's Drug, FDA Consumer (Mar. 1, 1999) (warning that a drug for treating Parkinson's disease can cause liver damage); Curry & Kulling, Newer Antiepileptic Drugs, American Family Physician (Feb. 1, 1998) (cataloging serious negative side effects of new antiepileptic drugs). This result is also inconsistent with the individualized approach of the ADA.

Finally, and critically, findings enacted as part of the ADA require the conclusion that Congress did not intend to bring under the statute's protection all those whose uncorrected conditions amount to disabilities. Congress found that "some 43,000,000 Americans have one or more physical or mental disabilities, and this number is increasing as the population as a whole is growing older." §12101(a)(1). This figure is inconsistent with the definition of disability pressed by petitioners.

Although the exact source of the 43 million figure is not clear, the corresponding finding in the 1988 precursor to the ADA was drawn directly from a report prepared by the National Council on Disability. See Burgdorf, The Americans with Disabilities Act: Analysis and Implications of a Second-Generation Civil Rights Statute, 26 Harv. Civ. Rights–Civ. Lib. L. Rev. 413, 434, n. 117 (1991) (reporting, in an article authored by the drafter of the original ADA bill introduced in Congress in 1988, that the report was the source for a figure of 36 million disabled persons quoted in the versions of the bill introduced in 1988). That report detailed the difficulty of estimating the number of disabled persons due to varying operational definitions of disability. National Council on Disability, Toward Independence 10 (1986). It explained that the estimates of the number of disabled Americans ranged from an overinclusive 160 million under a "health conditions approach," which looks at all conditions that impair the health or

normal functional abilities of an individual, to an underinclusive 22.7 million under a "work disability approach," which focuses on individuals' reported ability to work. *Id.*, at 10–11. It noted that "a figure of 35 or 36 million [was] the most commonly quoted estimate." *Id.*, at 10. The 36 million number included in the 1988 bill's findings thus clearly reflects an approach to defining disabilities that is closer to the work disabilities approach than the health conditions approach.

This background also provides some clues to the likely source of the figure in the findings of the 1990 Act. Roughly two years after issuing its 1986 report, the National Council on Disability issued an updated report. See On the Threshold of Independence (1988). This 1988 report settled on a more concrete definition of disability. It stated that 37.3 million individuals have "difficulty performing one or more basic physical activities," including "seeing, hearing, speaking, walking, using stairs, lifting or carrying, getting around outside, getting around inside, and getting into or out of bed." *Id.*, at 19. The study from which it drew this data took an explicitly functional approach to evaluating disabilities. See U. S. Dept. of Commerce, Bureau of Census, Disability, Functional Limitation, and Health Insurance Coverage: 1984/85, p. 2 (1986). It measured 37.3 million persons with a "functional limitation" on performing certain basic activities when using, as the questionnaire put it, "special aids," such as glasses or hearing aids, if the person usually used such aids. *Id.*, at 1, 47. The number of disabled provided by the study and adopted in the 1988 report, however, includes only noninstitutionalized persons with physical disabilities who are over age 15. The 5.7 million gap between the 43 million figure in the ADA's findings and the 37.3 million figure in the report can thus probably be explained as an effort to include in the findings those who were excluded from the National Council figure. See,

e.g., National Institute on Disability and Rehabilitation Research, Data on Disability from the National Health Interview Survey 1983–1985, pp. 61–62 (1988) (finding approximately 943,000 noninstitutionalized persons with an activity limitation due to mental illness; 947,000 noninstitutionalized persons with an activity limitation due to mental retardation; 1,900,000 noninstitutionalized persons under 18 with an activity limitation); U. S. Dept. of Commerce, Bureau of the Census, Statistical Abstract of the United States 106 (1989) (Table 168) (finding 1,553,000 resident patients in nursing and related care facilities (excluding hospital-based nursing homes) in 1986).

Regardless of its exact source, however, the 43 million figure reflects an understanding that those whose impairments are largely corrected by medication or other devices are not "disabled" within the meaning of the ADA. The estimate is consistent with the numbers produced by studies performed during this same time period that took a similar functional approach to determining disability. For instance, Mathematica Policy Research, Inc., drawing on data from the National Center for Health Statistics, issued an estimate of approximately 31.4 million civilian noninstitutionalized persons with "chronic activity limitation status" in 1979. Digest of Data on Persons with Disabilities 25 (1984). The 1989 Statistical Abstract offered the same estimate based on the same data, as well as an estimate of 32.7 million noninstitutionalized persons with "activity limitation" in 1985. Statistical Abstract, *supra*, at 115 (Table 184). In both cases, individuals with "activity limitations" were those who, relative to their age-sex group could not conduct "usual" activities: *e.g.*, attending preschool, keeping house, or living independently. See National Center for Health Statistics, U. S. Dept. of Health and Human Services, Vital and Health Statistics, Current Estimates from the National Health Interview

Survey, 1989, Series 10, pp. 7–8 (1990).

By contrast, nonfunctional approaches to defining disability produce significantly larger numbers. As noted above, the 1986 National Council on Disability report estimated that there were over 160 million disabled under the "health conditions approach." Toward Independence, *supra*, at 10; see also Mathematica Policy Research, *supra*, at 3 (arriving at similar estimate based on same Census Bureau data). Indeed, the number of people with vision impairments alone is 100 million. See National Advisory Eye Council, U. S. Dept. of Health and Human Services, Vision Research– A National Plan: 1999-2003, p. 7 (1998) ("[M]ore than 100 million people need corrective lenses to see properly"). "It is estimated that more than 28 million Americans have impaired hearing." National Institutes of Health, National Strategic Research Plan: Hearing and Hearing Impairment v (1996). And there were approximately 50 million people with high blood pressure (hypertension). Tindall, Stalking a Silent Killer; Hypertension, Business & Health 37 (August 1998) ("Some 50 million Americans have high blood pressure").

Because it is included in the ADA's text, the finding that 43 million individuals are disabled gives content to the ADA's terms, specifically the term "disability." Had Congress intended to include all persons with corrected physical limitations among those covered by the Act, it undoubtedly would have cited a much higher number of disabled persons in the findings. That it did not is evidence that the ADA's coverage is restricted to only those whose impairments are not mitigated by corrective measures.

The dissents suggest that viewing individuals in their corrected state will exclude from the definition of "disab[led]" those who use prosthetic limbs, see *post*, at 3–4 (opinion of STEVENS, J.), *post*, at 1 (opinion of BREYER, J.), or take medicine for epilepsy or high blood pressure,

see *post*, at 14, 16 (opinion of STEVENS, J.). This suggestion is incorrect. The use of a corrective device does not, by itself, relieve one's disability. Rather, one has a disability under subsection A if, notwithstanding the use of a corrective device, that individual is substantially limited in a major life activity. For example, individuals who use prosthetic limbs or wheelchairs may be mobile and capable of functioning in society but still be disabled because of a substantial limitation on their ability to walk or run. The same may be true of individuals who take medicine to lessen the symptoms of an impairment so that they can function but nevertheless remain substantially limited. Alternatively, one whose high blood pressure is "cured" by medication may be regarded as disabled by a covered entity, and thus disabled under subsection C of the definition. The use or nonuse of a corrective device does not determine whether an individual is disabled; that determination depends on whether the limitations an individual with an impairment *actually* faces are in fact substantially limiting.

Applying this reading of the Act to the case at hand, we conclude that the Court of Appeals correctly resolved the issue of disability in respondent's favor. As noted above, petitioners allege that with corrective measures, their visual acuity is 20/20, App. 23, Amended Complaint ¶36, and that they "function identically to individuals without a similar impairment," *id.*, at 24, Amended Complaint ¶37e. In addition, petitioners concede that they "do not argue that the use of corrective lenses in itself demonstrates a substantially limiting impairment." Brief for Petitioners 9, n. 11. Accordingly, because we decide that disability under the Act is to be determined with reference to corrective measures, we agree with the courts below that petitioners have not stated a claim that they are substantially limited in any major life activity.

IV

Our conclusion that petitioners have failed to state a claim that they are actually disabled under subsection (A) of the disability definition does not end our inquiry. Under subsection (C), individuals who are "regarded as" having a disability are disabled within the meaning of the ADA. See §12102(2)(C). Subsection (C) provides that having a disability includes "being regarded as having," §12102(2)(C), "a physical or mental impairment that substantially limits one or more of the major life activities of such individual," §12102(2)(A). There are two apparent ways in which individuals may fall within this statutory definition: (1) a covered entity mistakenly believes that a person has a physical impairment that substantially limits one or more major life activities, or (2) a covered entity mistakenly believes that an actual, nonlimiting impairment substantially limits one or more major life activities. In both cases, it is necessary that a covered entity entertain misperceptions about the individual– it must believe either that one has a substantially limiting impairment that one does not have or that one has a substantially limiting impairment when, in fact, the impairment is not so limiting. These misperceptions often "resul[t] from stereotypic assumptions not truly indicative of . . . individual ability." See 42 U. S. C. §12101(7). See also *School Bd. of Nassau Cty.* v. *Arline*, 480 U. S. 273, 284 (1987) ("By amending the definition of 'handicapped individual' to include not only those who are actually physically impaired, but also those who are regarded as impaired and who, as a result, are substantially limited in a major life activity, Congress acknowledged that society's accumulated myths and fears about disability and disease are as handicapping as are the physical limitations that flow from actual impairment"); 29 CFR pt. 1630, App. §1630.2(l) (explaining that the purpose of the regarded as prong is to cover individuals "rejected from a job because

of the 'myths, fears and stereotypes' associated with disabilities").

There is no dispute that petitioners are physically impaired. Petitioners do not make the obvious argument that they are regarded due to their impairments as substantially limited in the major life activity of seeing. They contend only that respondent mistakenly believes their physical impairments substantially limit them in the major life activity of working. To support this claim, petitioners allege that respondent has a vision requirement, which is allegedly based on myth and stereotype. Further, this requirement substantially limits their ability to engage in the major life activity of working by precluding them from obtaining the job of global airline pilot, which they argue is a "class of employment." See App. 24–26, Amended Complaint ¶38. In reply, respondent argues that the position of global airline pilot is not a class of jobs and therefore petitioners have not stated a claim that they are regarded as substantially limited in the major life activity of working.

Standing alone, the allegation that respondent has a vision requirement in place does not establish a claim that respondent regards petitioners as substantially limited in the major life activity of working. See Post-Argument Brief for Respondent 2–3 (advancing this argument); Post-Argument Brief for the United States et al. as Amici Curiae 5–6 ("[U]nder the EEOC's regulations, an employer may make employment decisions based on physical characteristics"). By its terms, the ADA allows employers to prefer some physical attributes over others and to establish physical criteria. An employer runs afoul of the ADA when it makes an employment decision based on a physical or mental impairment, real or imagined, that is regarded as substantially limiting a major life activity. Accordingly, an employer is free to decide that physical characteristics or medical conditions that do not rise to the

level of an impairment– such as one's height, build, or singing voice– are preferable to others, just as it is free to decide that some limiting, but not *substantially* limiting, impairments make individuals less than ideally suited for a job.

Considering the allegations of the amended complaint in tandem, petitioners have not stated a claim that respondent regards their impairment as *substantially limiting* their ability to work. The ADA does not define "substantially limits," but "substantially" suggests "considerable" or "specified to a large degree." See Webster's Third New International Dictionary 2280 (1976) (defining "substantially" as "in a substantial manner" and "substantial" as "considerable in amount, value, or worth" and "being that specified to a large degree or in the main"); see also 17 Oxford English Dictionary 66–67 (2d ed. 1989) ("substantial": "[r]elating to or proceeding from the essence of a thing; essential"; "of ample or considerable amount, quantity or dimensions"). The EEOC has codified regulations interpreting the term "substantially limits" in this manner, defining the term to mean "[u]nable to perform" or "[s]ignificantly restricted." See 29 CFR §§1630.2(j)(1)(i),(ii) (1998)

When the major life activity under consideration is that of working, the statutory phrase "substantially limits" requires, at a minimum, that plaintiffs allege they are unable to work in a broad class of jobs. Reflecting this requirement, the EEOC uses a specialized definition of the term "substantially limits" when referring to the major life activity of working:

> "significantly restricted in the ability to perform either a class of jobs or a broad range of jobs in various classes as compared to the average person having comparable training, skills and abilities. The inability to perform a single, particular job does not consti-

> tute a substantial limitation in the major life activity of working." §1630.2(j)(3)(i).

The EEOC further identifies several factors that courts should consider when determining whether an individual is substantially limited in the major life activity of working, including the geographical area to which the individual has reasonable access, and "the number and types of jobs utilizing similar training, knowledge, skills or abilities, within the geographical area, from which the individual is also disqualified." §§1630.2(j)(3)(ii)(A), (B). To be substantially limited in the major life activity of working, then, one must be precluded from more than one type of job, a specialized job, or a particular job of choice. If jobs utilizing an individual's skills (but perhaps not his or her unique talents) are available, one is not precluded from a substantial class of jobs. Similarly, if a host of different types of jobs are available, one is not precluded from a broad range of jobs.

Because the parties accept that the term "major life activities" includes working, we do not determine the validity of the cited regulations. We note, however, that there may be some conceptual difficulty in defining "major life activities" to include work, for it seems "to argue in a circle to say that if one is excluded, for instance, by reason of [an impairment, from working with others] . . . then that exclusion constitutes an impairment, when the question you're asking is, whether the exclusion itself is by reason of handicap." Tr. of Oral Arg. in *School Bd. of Nassau Co.* v. *Arline*, O. T. 1986, No. 85–1277, p. 15 (argument of Solicitor General). Indeed, even the EEOC has expressed reluctance to define "major life activities" to include working and has suggested that working be viewed as a residual life activity, considered, as a last resort, *only* "[i]f an individual is not substantially limited with respect to *any other* major life activity." 29 CFR pt.

1630, App. §1630.2(j) (1998) (emphasis added) ("If an individual is substantially limited in *any other* major life activity, no determination should be made as to whether the individual is substantially limited in working" (emphasis added)).

Assuming without deciding that working is a major life activity and that the EEOC regulations interpreting the term "substantially limits" are reasonable, petitioners have failed to allege adequately that their poor eyesight is regarded as an impairment that substantially limits them in the major life activity of working. They allege only that respondent regards their poor vision as precluding them from holding positions as a "global airline pilot." See App. 25–26, Amended Complaint ¶38f. Because the position of global airline pilot is a single job, this allegation does not support the claim that respondent regards petitioners as having a *substantially limiting* impairment. See 29 CFR §1630.2(j)(3)(i) ("The inability to perform a single, particular job does not constitute a substantial limitation in the major life activity of working"). Indeed, there are a number of other positions utilizing petitioners' skills, such as regional pilot and pilot instructor to name a few, that are available to them. Even under the EEOC's Interpretative Guidance, to which petitioners ask us to defer, "an individual who cannot be a commercial airline pilot because of a minor vision impairment, but who can be a commercial airline co-pilot or a pilot for a courier service, would not be substantially limited in the major life activity of working." 29 CFR pt. 1630, App. §1630.2.

Petitioners also argue that if one were to assume that a substantial number of airline carriers have similar vision requirements, they would be substantially limited in the major life activity of working. See Brief for Petitioners 44–45. Even assuming for the sake of argument that the adoption of similar vision requirements by other carriers would represent a substantial limitation on the major life

activity of working, the argument is nevertheless flawed. It is not enough to say that if the physical criteria of a single employer were *imputed* to all similar employers one would be regarded as substantially limited in the major life activity of working *only as a result of this imputation*. An otherwise valid job requirement, such as a height requirement, does not become invalid simply because it *would* limit a person's employment opportunities in a substantial way *if* it were adopted by a substantial number of employers. Because petitioners have not alleged, and cannot demonstrate, that respondent's vision requirement reflects a belief that petitioners' vision substantially limits them, we agree with the decision of the Court of Appeals affirming the dismissal of petitioners' claim that they are regarded as disabled.

For these reasons, the decision of the Court of Appeals for the Tenth Circuit is affirmed.

It is so ordered.