



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

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

MATTER OF G-W-

DATE: DEC. 30, 2015

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a biomedical researcher, seeks classification as an individual of extraordinary ability in the sciences. *See* Immigration and Nationality Act (the Act) § 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). The Director, Texas Service Center, denied the petition. The matter is now before us on appeal. The appeal will be sustained.

I. PERTINENT FACTS AND PROCEDURAL HISTORY

The classification the Petitioner seeks makes visas available to foreign nationals 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 determined that the Petitioner had not satisfied the initial evidence requirements set forth at 8 C.F.R. § 204.5(h)(3), which requires a one-time achievement or exhibits that meet at least three of the ten regulatory criteria. On appeal, the Petitioner submits a statement with additional exhibits.

For the reasons discussed below, we are satisfied that the evidence of record in the aggregate, including that he provides on the appeal, adequately establishes the Petitioner's eligibility for the classification. Specifically, the Petitioner has submitted documentation that satisfies at least three of the ten regulatory criteria set forth in the regulations at 8 C.F.R. § 204.5(h)(3)(i)-(x). Further, he has demonstrated that he is one of the small percentage who are at the very top in the field of endeavor, and that he has sustained national or international acclaim. *See* 8 C.F.R. § 204.5(h)(2), (3).

II. RELEVANT LAW AND REGULATIONS

Section 203(b) of the Act states, in pertinent part, that:

(1) Priority workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with extraordinary ability. -- An alien is described in this subparagraph if--

(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international

(b)(6)

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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 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 a petitioner does not submit this documentation, then he must meet at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i) – (x).

Satisfying at least three criteria, however, does not, in and of itself, establish eligibility for this classification. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the evidence is first counted and then, if satisfying the required number of criteria, considered in the context of a final merits determination). *See also Rijal v. USCIS*, 772 F.Supp.2d 1339 (W.D. Wash. 2011) (affirming our proper application of *Kazarian*), *aff'd*, 683 F.3d 1030 (9th Cir. 2012); *Visinscaia v. Beers*, 4 F.Supp.3d 126, 131-32 (D.D.C. 2013) (finding that U.S. Citizenship and Immigration Services (USCIS) appropriately applied the two-step review); *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (holding that the "truth is to be determined not by the quantity of evidence alone but by its quality" and that USCIS examines "each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true").

III. ANALYSIS

A. Evidentiary Criteria

The Director determined that the Petitioner had participated as a judge of the work of others in the same or an allied field and had authored published scholarly articles pursuant to 8 C.F.R. § 204.5(h)(3)(iv), (vi). The record supports those findings. Specifically, the Petitioner provided documentation of his peer review of scholarly articles on behalf journals including [REDACTED] and his articles published journals such as [REDACTED]

For the reasons discussed below, we conclude that, on appeal, the Petitioner overcomes the Director's concerns relating to a third criterion.

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Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.

The evidence must establish that the contributions rise to the level of major significance in the field as a whole, rather than to a project or to an organization. The phrase "major significance" is not superfluous and, thus, it has some meaning. *Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F. 3d 28, 31 (3rd Cir. 1995) *quoted in APWU v. Potter*, 343 F.3d 619, 626 (2nd Cir. Sep 15, 2003). Contributions of major significance connotes that the Petitioner's work has significantly impacted the field. *See* 8 C.F.R. § 204.5(h)(3)(v); *see also Visinscaia*, 4 F. Supp. 3d at 135-136.

The Petitioner asserts that he has made contributions of major significance in two areas: the [REDACTED]. The Petitioner also maintains that the attention his work has received from the field is a contributing factor in satisfying this criterion. The Director determined that the Petitioner did not meet the requirements of this criterion. Specifically, the Director discussed the expert letters and concluded that even though the authors identify the Petitioner's published work in recognized journals, his work presented at scientific conferences, and how his work has attracted attention from others in his field, such recognition is expected for any valuable research that is original. The Director acknowledged the Petitioner's references to the number of the citations to his work, but found that the various lists and charts he provided were not from outside sources.

On appeal, the Petitioner submits corroboration of his citations from outside sources, [REDACTED]. Both exhibits confirm the Petitioner's previous assertions of the extent of his citation record, and demonstrate that he is extensively cited in prominent publications in his field. Within the appellate brief, the Petitioner also indicates that the Director considered each element of his contributions individually, whereas he should have also considered them together to determine if the Petitioner might meet the requirements of this criterion. The factors the Petitioner lists that should be considered collectively are that his work is original, it has been followed-up and built upon, it was published in journals with an excellent reputation, and it has been frequently cited. We agree that this criterion requires a broad perspective of the Petitioner's achievements to determine if his findings have sufficiently influenced the field. Based on the new documentation on appeal, coupled with the other evidence in the record, our conclusion is that he has contributed to the field in a manner consistent with this criterion's requirements. Therefore, we withdraw the Director's adverse determination as it relates to this criterion.

B. Summary

For the reasons discussed above, we find that the Petitioner has submitted the requisite initial evidence that satisfies three of the ten regulatory criteria.

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C. Final Merits Determination

We will next conduct a final merits determination that considers all of the evidence in the context of whether or not the Petitioner has demonstrated: (1) a “level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor,” 8 C.F.R. § 204.5(h)(2); and (2) “that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise.” Section 203(b)(1)(A) of the Act; 8 C.F.R. § 204.5(h)(3). *See also Kazarian*, 596 F.3d at 1119-20. The Petitioner has included extensive documentation of his achievements in the biomedical field. These materials, in the aggregate, are sufficient to corroborate the Petitioner’s sustained national acclaim as a researcher and that his achievements have been recognized in the field of expertise and that the Petitioner is among that small percentage who have risen to the very top of the field of endeavor.

The Petitioner peer-reviewed an extensive number of articles for multiple journals. Further, he authored a number of articles in distinguished journals, including [redacted] and [redacted] that have garnered citations of a significant number both individually and in the aggregate. Additionally, the citations appear in prestigious journals such as [redacted]. That review article suggested future research has built upon and shown consistency with the Petitioner’s work. Other review articles the Petitioner offered reflect multiple references to the Petitioner’s work. Furthermore, the Petitioner submitted reference letters from both close colleagues, as well as objective experts, detailing his specific contributions and explaining how those contributions are of major significance in his field. For example, [redacted] Professor of Molecular Cell Biology at [redacted] in the Netherlands, stated:

As the leading investigator, [the Petitioner] later published another two groundbreaking findings. One of these was the demonstration that the [redacted] linker region possesses transcription activity, and the other was the discovery of [redacted] induced [redacted] linker phosphorylation. [The Petitioner’s] work was far ahead of other groups and reshaped the field of [redacted] linker region research. His identification of potential kinases not only expanded the list of pathways that can impinge on [redacted] signaling but also expanded the list of “druggable” targets that can influence [redacted] function.

[redacted] affirmation that the Petitioner’s “pioneering work was frequently built on and elaborated in later investigations which invariably confirmed his initial findings” is consistent with the number and content of the citations. Therefore, the submitted evidence in the aggregate is sufficient to demonstrate the Petitioner’s sustained acclaim and that his achievements have been recognized in the field of expertise.

IV. CONCLUSION

Upon careful review of the record, we conclude that the Petitioner has shown by a preponderance of the evidence that he is within the small percentage of individuals who have risen to the very top of his field.

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The documentation submitted establishes that the Petitioner has sustained national or international acclaim, his achievements have been recognized in his field, he seeks to continue working in the same field, and his entry will substantially benefit prospectively the United States.

The burden of proof in visa petition proceedings remains entirely with the Petitioner. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the Petitioner has sustained that burden. Accordingly, we will sustain the appeal.

ORDER: The appeal is sustained.

Cite as *Matter of G-W-*, ID# 14954 (AAO Dec. 30, 2015)