



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

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

MATTER OF R-A-V-

DATE: SEPT. 11, 2015

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a materials chemistry researcher, seeks classification as an “alien 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, Nebraska Service Center, denied the employment-based immigrant visa petition. The matter is now before us on appeal. The appeal will be sustained.

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 documentation of a one-time achievement or evidence that meets at least three of the ten regulatory criteria. On appeal, the Petitioner submits a brief. For the reasons discussed below, we find that the Petitioner meets the statutory and regulatory requirements for the classification sought.

I. LAW

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 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

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(iii) the alien's entry into the United States will substantially benefit prospectively the United States.

U.S. Citizenship and Immigration Services (USCIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* H.R. 723 101st Cong., 2d Sess. 59 (1990); 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). The term "extraordinary ability" refers only to those individuals in that small percentage who has risen to the very top of the field of endeavor. *Id.*; 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 her achievements in the field through evidence of a one-time achievement (that is, a major, internationally recognized award). If the petitioner does not submit this evidence, then she must submit sufficient qualifying evidence that meets at least three of the ten categories of evidence listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

The submission of evidence relating to 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 USCIS' 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 USCIS appropriately applied the two-step review); *Matter of Chawathe*, 25 I&N Dec. at 376 (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").

II. ANALYSIS

A. Evidentiary Criteria

The Petitioner earned her Ph.D. in Chemistry from [REDACTED] in India in 2007. Currently, she is working in the [REDACTED] Thermochemistry Laboratory at the [REDACTED]. We find that the petitioner's evidence meets the following three categories of evidence under 8 C.F.R. § 204.5(h)(3).

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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.

The Petitioner submitted documentation showing that she served as a peer reviewer for multiple journals such as [REDACTED]. Accordingly, the evidence supports the Director's finding that the Petitioner meets this regulatory criterion.

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

The director determined that the Petitioner did not establish eligibility for this criterion. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires "[e]vidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field." A review of the record of proceeding reflects that the Petitioner submitted sufficient documentary evidence establishing that she meets the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v). Therefore, the Director's determination on this issue will be withdrawn.

The Petitioner submitted letters of support from experts in the field discussing the significance of her original research contributions. The experts' statements do not merely reiterate the regulatory language of this criterion, they describe how the Petitioner's scientific contributions are both original and of major significance in the field. For example, [REDACTED] Senior Research Scientist, [REDACTED] Environmental Molecular Sciences Laboratory, observed that the Petitioner's original work concerning surface enthalpy, enthalpy of water adsorption, and [REDACTED] [REDACTED] has been extensively cited by others in the field and provides an "important contribution for establishing limits under which zirconia nanoparticles can be used."

[REDACTED] Professor in the Departments of Physics and Chemistry, [REDACTED] [REDACTED] stated that the Petitioner's article in [REDACTED] reported "the first energetic measurement on biogenic amorphous carbonate and has profound implication to [sic] biomineralization field." The Petitioner submitted a Google Scholar citation report reflecting 99 cites to the aforementioned article since 2010. [REDACTED] stated:

Geological sequestration of [REDACTED] has a greater potential to store large quantities of [REDACTED] and could be a critical solution to control the climate change effects on global environment. . . . [The petitioner's] outstanding research at [REDACTED] [REDACTED] has contributed to address the major technological knowledge gaps in thermodynamic aspects of the molecular and nanoscale non-equilibrium processes involving nanoparticles, mineral surface dynamics, microbiota on mineral dissolution/precipitation, nanoscale confinement that control subsurface [REDACTED] sequestration. The research performed [by the petitioner] at [REDACTED] also address[es] the key US DOE [Department of Energy] needs in atmospheric, earth, environmental, and energy science.

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Associate Professor, Department of Civil Engineering, University of discussed the Petitioner's "pioneering experiments on using LDHs [Layered Double Hydroxides] as precursors for nanospinel oxide syntheses" and indicated that they provided "valuable sources of information needed for the design and control of more efficient and cost effective low temperature techniques for the large scale production of nanospinels."

Chief Scientist for Materials Synthesis and Simulation Across Scales at Laboratory, and Affiliate Professor of Materials Science and Engineering at the University of stated that the Petitioner "developed a crucial synthetic and calorimetric methodology to study the thermodynamics" of various materials. In addition, noted that the Petitioner's research findings concerning amorphous calcium carbonate "have contributed greatly to the ability to predict the best cap rock environments for preventing carbon dioxide leakage." also commented that the Petitioner's results are "having widespread impact as they provide a fundamental knowledge of [the] carbonate crystal growth mechanism for other scientists working in the fields of crystal growth and biomineralization."

Professor and Chair in Chemistry of Solids-Energy, indicated that the Petitioner "has achieved a breakthrough in research associated with material stability driven synthesis control over polymorphism and practical applications of lithium polyanionic battery materials" and that her "work has implications for the US DOE [needs, and energy security."

Professor, School of Earth Sciences, University, stated that the Petitioner's thermodynamic studies "have shown the existence of amorphous and nano-phase precursors that can help in crystallization of calcium, iron, calcium-magnesium solid solution, and manganese carbonates by providing lower energy pathways" and that "the technique she developed can now also be applied to related amorphous materials." With regard to the Petitioner's research concerning structural disorders in LDHs, explained that the Petitioner "developed a structural analysis protocol to identify different types of stacking disorders." In addition, asserted that the Petitioner's structural analysis protocol "can be applied not just to LDHs, but to numerous other compound[s] related to environmental systems" and that her methodology "will be used by many other scientists working in the field."

Significantly, in support of the experts' statements, the Petitioner submitted documentation from Google Scholar showing more than six hundred cites to her published findings. In addition to the volume of cites, the content of the citations reveal that other researchers have not only referenced the petitioner's work, but expanded on it. For example, a 2011 article in by an independent research team cites the petitioner's work as identifying values that are characteristic of amorphous calcium carbonate. These citations are persuasive evidence that help support a conclusion that the petitioner's work is familiar to and has influenced other researchers. This evidence corroborates the experts' statements that the Petitioner has made original contributions of major significance in her field that go well beyond merely adding to the general pool of knowledge

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as all original research does. The submitted documentation shows that the petitioner's contributions are important not only to the institutions where she has worked, but throughout the greater field as well. Leading researchers have acknowledged the value of the Petitioner's work and its major significance in the field. Accordingly, given all of the evidence in the aggregate, the Petitioner has established that she meets this regulatory criterion.

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.

The Petitioner submitted evidence of her authorship of scholarly articles in numerous professional journals including [REDACTED] and [REDACTED]. Accordingly, the evidence supports the director's finding that the Petitioner meets this regulatory criterion.

B. Summary

The Petitioner has submitted the requisite initial evidence, in this case, evidence that satisfies three of the ten regulatory criteria.

C. Final Merits Determination

The next step is 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.

In the present matter, the Petitioner has submitted extensive documentation of her achievements in the materials chemistry field and has demonstrated a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990). The evidence provided, in the aggregate, is sufficient to demonstrate the Petitioner's sustained national and international acclaim as a researcher and that her achievements have been recognized in the field of expertise. In addition, the submitted documentation shows that the Petitioner is among that small percentage who has risen to the very top of the field of endeavor. The Petitioner peer reviewed articles for multiple journals. Furthermore, the Petitioner authored a substantial number of articles in distinguished journals and conference proceedings that have garnered an unusually large number of citations, some of which apply and build upon her work. *See Kazarian*, 596 F.3d at 1121 (citations may be relevant to the final merits determination of whether an individual is at the very top of the field). Moreover, the Petitioner submitted reference letters from independent experts in the field, detailing her specific contributions and explaining how those contributions are of major significance in her field. For example, [REDACTED] after discussing examples of the Petitioner's specific achievements and their impact on the field, states that her "groundbreaking research accomplishments have national significance for applied materials science, environmental science and fundamental thermodynamics"

and that the Petitioner has “extraordinary skills in structure and chemical thermodynamic research.” While we need not accept unsupported conclusory assertions,¹ the evidence of record, including evidence not discussed in this decision, supports these conclusions.

In light of the evidence discussed above and other corroborating evidence of record, the Petitioner’s achievements are commensurate with sustained national and international acclaim at the very top of her field.

III. CONCLUSION

The Petitioner has submitted evidence qualifying under at least three of the ten categories of evidence and established 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” and “sustained national or international acclaim.” The Petitioner’s achievements have been recognized in her field of expertise. The Petitioner has established that she seeks to continue working in the same field in the United States. The Petitioner has established that her entry into the United States will substantially benefit prospectively the United States. Therefore, the Petitioner has established eligibility for the benefit sought under section 203 of the Act.

In visa petition proceedings, it is the petitioner’s burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has been met.

ORDER: The appeal is sustained.

Cite as *Matter of R-A-V-*, ID# 13188 (AAO Sept. 11, 2015)

¹ See *1756, Inc. v. The Attorney General of the United States*, 745 F. Supp. 9, 15 (D.C. Dist. 1990).