



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

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

MATTER OF T-S-

DATE: AUG. 23, 2016

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a researcher, seeks classification as an individual of “extraordinary ability” in the sciences. *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, Nebraska Service Center, denied the petition, finding the Petitioner met two of ten regulatory criteria listed under 8 C.F.R. § 204.5(h)(3)(i)-(x), when at least three are required. Although he indicated in a request for evidence (RFE) that the Petitioner met a third criterion, the published material criterion under 8 C.F.R. § 204.5(h)(3)(iii), he did not make this finding in his decision. Concluding that the Petitioner had not satisfied the initial evidence requirements set forth at 8 C.F.R. § 204.5(h)(3), the Director did not proceed to a final merits determination.

The matter is now before us on appeal. In his appeal, the Petitioner maintains that the Director erred in not considering the entire record in a final merits determination after finding that the Petitioner met at least three of ten regulatory criteria listed under 8 C.F.R. § 204.5(h)(3)(i)-(x). In addition, he states that he has demonstrated his extraordinary ability as a researcher in the field of gastroenterology.

Upon *de novo* review, we will dismiss the Petitioner’s appeal.

I. LAW

The Petitioner may demonstrate his extraordinary ability through sustained national or international acclaim and achievements that have been recognized in his field through extensive documentation. Specifically, section 203(b)(1)(A) of the Act states:

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
- (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 achievements in the field through a one-time achievement (that is a major, internationally recognized award). If he does not submit this documentation, then he must provide sufficient qualifying evidence that meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

Satisfaction of 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 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), *aff'd*, 683 F.3d 1030 (9th Cir. 2012); *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 U.S. Citizenship and Immigration Services (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"). Accordingly, where a petitioner submits qualifying evidence under at least three criteria, we will determine whether the totality of 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.

II. ANALYSIS

The Petitioner, who received a doctor of medicine degree in Syria, is a researcher in the field of gastroenterology. He has authored articles that are published in professional publications. While the Petitioner did not explicitly note which criteria he satisfied, the Director found that he offered documentation that met two of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x). Because the Director also noted in the RFE that the Petitioner submitted evidence relating to a third criterion, in this case, we will consider the entire record in a final merits determination. In a final merits determination, we conclude that the Petitioner has not established his eligibility for the classification. Specifically, he has not demonstrated sustained national or international acclaim or submitted extensive documentation confirming that his achievements have been recognized in the field. Accordingly, we will dismiss the appeal.

Matter of T-S-

A. Evidentiary Criteria¹

Under the regulation at 8 C.F.R. § 204.5(h)(3), the Petitioner must present initial evidence of either 1) documentation of a one-time major achievement, or 2) materials that meet at least three of ten regulatory criteria. In this case, the Petitioner has not maintained or shown that he is the recipient of a qualifying award at a level similar to that of the Nobel Prize. As such, he must provide at least three of the ten types of documentation listed under 8 C.F.R. § 204.5(h)(3)(i)-(x). The Petitioner has submitted evidence that is relevant to the following criteria.

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

The Petitioner maintains that he meets this criterion because of his receipt of (1) the [REDACTED] (2) the [REDACTED] (3) a [REDACTED] educational grant, (4) a [REDACTED] and (5) a \$5,000 [REDACTED]

The Petitioner has not demonstrated that he meets this criterion, as he has not shown that any of the abovementioned achievements, which he characterized as “prestigious grants and awards,” are nationally or internationally recognized.

Although the Petitioner has submitted proof of his receipt of the accolades, he has not demonstrated that the awards or grants are recognized beyond the issuing entities on a national or international level. The record does not illustrate that the awards and grants are open to many in the field. For example, the Petitioner’s [REDACTED] educational grant and [REDACTED] scholarship are awards available only to students of particular academic programs. As they exclude scientists who have completed their education and who are not in those academic programs, the Petitioner has not established that these grants or scholarships are recognized nationally or internationally for excellence in the field.

Similarly, the Petitioner has not shown that his other achievements are recognized beyond the entities issuing the awards. The Director noted in his decision that the Petitioner did not demonstrate his poster award was recognized beyond the [REDACTED] annual meeting. The Petitioner presented two reference letters from [REDACTED] M.D., a professor of medicine at the [REDACTED]. In both letters, [REDACTED] referenced the Petitioner’s poster award, but did not elaborate on the prestige or recognition of the award nationally or internationally. Likewise, [REDACTED] M.D., a professor of medicine at the [REDACTED]

¹ We have reviewed all of the Petitioner’s evidence and will address those criteria he indicates he meets or for which he has submitted relevant and probative documentation.

² The Petitioner also stated that he received research funding from the [REDACTED]. He has not submitted corroborating evidence. Regardless, he has not shown that funding for a future research project honors or recognizes past excellence, as required under the plain language of this criterion.

(b)(6)

Matter of T-S-

indicated that the Petitioner won the poster award at “a major national meeting,” but did not illustrate that the award was either nationally or internationally recognized.

and M.D., the chief of the Gastroenterology and Hepatology Department at the referenced the Petitioner’s receipt of a research grant and a research award from . Neither, however, offered additional information on the grant or award, or presented proof that the accolades are recognized nationally or internationally. In addition, research grants do not usually honor or recognize past excellence. Rather, their purposes are to fund a scientist’s work.

The record has limited material on the Petitioner’s awards and grants. The Petitioner has not presented evidence on the competitiveness or selectiveness of the awards or grants. Similarly, the record does not contain material on who may be considered for the awards or grants, or the selection criteria. There is also no indication that the Petitioner’s receipt of the awards or grants garnered any media attention. Accordingly, the Petitioner has submitted insufficient proof to satisfy the plain language requirements of this criterion.

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.

The Petitioner states that he meets this criterion because he is a member of the . According to the website, it “is the leading organization of scientists and health care professionals committed to preventing and curing liver disease.” The Petitioner presented an online printout indicating that he joined the on September 1, 2015, after he filed his petition in August 2015. A petitioner must demonstrate eligibility for the visa petition at the time of filing. See 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg’l Comm’r 1971); *Matter of Izummi*, 22 I&N Dec. 169, 175-76 (Assoc. Comm’r 1998) (adopting *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981) for the proposition that we cannot “consider facts that come into being only subsequent to the filing of a petition.”). As he joined the association after he submitted the petition, he may not rely on his membership to meet this criterion. Furthermore, the record lacks sufficient evidence on how one becomes an member. There is no documentation demonstrating that it requires outstanding achievements of its members, as judged by recognized national or international experts.

In addition, the Petitioner stated in his curriculum vitae that he is a member of the and the . He has not, however, submitted documentation verifying his membership in either of these organizations. Moreover, he has not established that either requires outstanding achievements of its members, as judged by recognized national or international experts. Accordingly, the Petitioner has not presented sufficient evidence showing he satisfies the plain language requirements of this criterion.

(b)(6)

Matter of T-S-

Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.

Although in his RFE, the Director stated that the Petitioner met this criterion, the record does not support this conclusion, and the Director did not make this finding in his decision. The Petitioner submitted a printout from [REDACTED] indicating that [REDACTED] interviewed him about his article entitled [REDACTED]. [REDACTED] verified in his letter that [REDACTED] interviewed the Petitioner regarding his paper. The Petitioner provided materials from [REDACTED] and [REDACTED] which reported on his research, and from [REDACTED] that referenced one of his published articles. While these documents appeared in professional publications, they were about his research and mentioned his scholarly articles. They were, however, not about him, as required under the plain language of the criterion. The Petitioner has not shown the published materials discussed or were focused on him. They did not offer information on his educational, training or employment history, or other facts specifically about him. Rather, the published materials summarized and explained his findings. Accordingly, the Petitioner has not established that he satisfies the plain language requirements of 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.

In his decision, the Director determined that the Petitioner met this criterion. The record, however, does not support this determination. The Petitioner has submitted a number of email correspondences inviting him to review manuscripts for the [REDACTED] and the [REDACTED]. But he has not offered documentation illustrating that he accepted the invitations and actually reviewed the manuscripts. In his curriculum vitae, while he listed these two publications as "Journals [that have] requested my review"; he did not indicate that he actually served as a reviewer. No other evidence in the record, including reference letters, indicated that he had participated as a judge of others' work. Accordingly, the Petitioner has not presented sufficient proof establishing that he satisfies the plain language requirements of this criterion.

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

The Petitioner stated that his "research has been instrumental in the development of cutting edge clinical treatments in Gastroenterology that have led to dramatic and far reaching impacts in this field of medicine." Relying primarily on reference letters, his publication, citation and presentation record, the Petitioner maintains that he has made original scientific contributions of major significance in gastroenterology. The evidence, however, does not support this conclusion.

(b)(6)

Matter of T-S-

While the Petitioner has offered reference letters indicating that his research projects are original, he has not provided persuasive evidence of their significance in the field. As this issue relates to the quality of the evidence provided, in this case, we will address it in the final merits determination.

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

The Director found that the Petitioner met this criterion. The record supports his finding. Specifically, the Petitioner has authored scholarly articles published in professional publications, such as [REDACTED] and [REDACTED]

Accordingly, he has met this criterion.

B. Final Merits Determination

While the Petitioner has not met at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x), in this case, we will review the entire record in a final merits determination. Specifically, we evaluate whether the Petitioner has demonstrated, by a preponderance of the evidence, that he has sustained national or international acclaim, and that his achievements have been recognized in the field through extensive documentation, making him one of the small percentage who have risen to the very top of the field of endeavor. If so, he has met the requisite burden of proof and established eligibility for visa classification as an individual of "extraordinary ability." 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. We determine that the Petitioner has not shown his eligibility.

The documents we consider in the final merits analysis may include achievements that are not directly applicable to one of the criteria listed under 8 C.F.R. § 204.5(h)(3)(i)-(x), and comparable evidence under 8 C.F.R. § 204.5(h)(4). Also, a petitioner may request that submissions that do not meet any of the enumerated criteria, and do not qualify as comparable evidence, be considered within a final merits analysis. In a final merits determination, we analyze the petitioner's accomplishments and weigh the totality of the evidence to determine if his successes are sufficient to demonstrate that he has 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.

In this case, the Petitioner's writing and publishing record, which meets the authorship of scholarly articles criterion under 8 C.F.R. § 204.5(h)(3)(vi), does not exhibit national or international acclaim, nor reveal a high level of recognition in his field. Authoring scholarly articles is inherent in a scientific researcher's occupation. More indicative of national or international acclaim is the field's response to a petitioner's articles. See *Kazarian*, 596 F.3d at 1122. Here, the Petitioner has authored a number of published scholarly articles. According to a printout from [REDACTED] that the Petitioner offered, four of his articles have been cited in other scientific work, while most have not garnered any citation. His most-cited article received three citations, and his remaining three articles had one or two citations each. The Petitioner has not demonstrated that his authorship and publication record is indicative of his national or international acclaim in the field. The Petitioner maintained that the citation frequency did

(b)(6)

Matter of T-S-

not reflect the actual significance of his research because all his major papers were published recently. As discussed, however, a petitioner must show eligibility for the visa petition at the time of filing, and may not secure a priority date based on the anticipation of future events, such as additional citations/to, or potential impact of, his research. See 8 C.F.R. § 103.2(b)(1), (12); *Katigbak*, 14 I&N Dec. at 49; *Izummi*, 22 I&N Dec. at 175-76. Anticipated citations, which are not yet materialized, do not establish the Petitioner's eligibility for the classification.

Authorship of scholarly articles is a frequent undertaking among research scientists. The Petitioner's work, which in this case resulted in four articles cited by other scientists, does not confirm that he has sustained national or international acclaim or that he is at the very top of his field. The Petitioner's writing and publishing activities, which earned a limited number of citations from other scientists, are not commensurate with one who is within the top percentage or who has extraordinary ability in his field. In addition, while the Petitioner has presented at conferences, such professional activities are common in the scientific field. The Petitioner has not demonstrated that his participation in conferences is indicative of his national or international acclaim.

Moreover, although the Petitioner has engaged in original research, he has not shown that the impact of his findings has resulted in sustained national or international acclaim or recognition. Rather, the Petitioner's references reflected that his findings have provided insights that may become significant in the future. For example, although [REDACTED] M.D., the chief of the Gastroenterology and Hepatology Department at the [REDACTED] stated that the Petitioner "is an extraordinary researcher with multiple major contributions to gastroenterology and hepatology," he did not identify these contributions. The record does not illustrate that others in the field have widely cited to the Petitioner's articles or have frequently incorporated his studies in their own research or practice. Instead, [REDACTED] "expect[ed]" the Petitioner's research, specifically as relating to the use of probiotics in liver transplant, "to garner great admiration and frequent citations." [REDACTED] also discussed the potential impacts of the Petitioner's other projects, but he did not point to specific evidence indicating that the work has already received broad recognition, such that it confirms the Petitioner's status at the very top of his field.

[REDACTED] M.D., an associate editor for the [REDACTED] who collaborated with the Petitioner on a number of projects, noted the Petitioner's potential in the field. [REDACTED] discussed the Petitioner's research in two reference letters, however, did not indicate that the Petitioner's findings have been widely accepted and applied, such that they might render the Petitioner one of the small percentage who has risen to the very top of the field. In his September 2015 letter, [REDACTED] stated that "[f]uture research will use" the Petitioner's findings; that his discovery relating to the use of probiotics "will decrease hospital stay[s], post [liver] transplant complications[,] and decrease the cost of liver transplants;" and that, because of his findings, "patients with liver cirrhosis will be spared from receiving unnecessary transfusion[s] with unnecessary side effect[s] and cost[s]." [REDACTED] maintained that he "expect[ed] a dramatic change in the transplant guidelines based on [the Petitioner's] findings." But the record does not reflect that [REDACTED] predictions have already materialized. [REDACTED] who mentored and collaborated with the Petitioner, also described the Petitioner's work. Like [REDACTED] he explained the potential of the Petitioner's research. To establish eligibility for this

(b)(6)

Matter of T-S-

classification, however, the documentation must show that, at the time of filing the petition, the Petitioner has already reached the very top of his field. *See* 8 C.F.R. § 103.2(b)(1), (12); *Katigbak*, 14 I&N Dec. at 49; *Izummi*, 22 I&N Dec. at 175-76. The potential impact of his research, however, is insufficient to illustrate his extraordinary ability.

██████████ also noted that, since the Petitioner's paper on the use of metal stents in malignant biliary obstruction in gastrointestinal endoscopy, "there is a move toward using metal stents even for patients with short life expectancy because [the Petitioner] proved that the metal stents are associated with less obstruction rate and better quality of life even at the short term." ██████████ however, does not explain the extent of this changed practice within the field. The record also does not show that this change was due to the Petitioner's research. ██████████ offered in his August 2015 letter that the "implementation of [the Petitioner's] important findings resulted in not only improvement in patients' quality of life but also a decrease in the total cost and the total number of endoscopic re-interventions." But he did not provide information on the scope of the implementation in the field. For example, neither ██████████ nor ██████████ specified that the adoption of the Petitioner's findings has occurred in a certain medical facility, a particular region, or the field. Without additional information, the Petitioner has not shown he has risen to the very top of the field.

The Petitioner and several of his references maintain that his contributions are significant because they led to the publication of scholarly articles, conference papers, and participation and presentations in conferences. Publication and presentation illustrate that the research is original and worthy of dissemination in the field. The Petitioner presented materials showing that his paper published in ██████████ had been downloaded and viewed online. This evidence corroborates that he has disseminated his scientific findings. To demonstrate impact, however, he must submit documentation on the field's reaction after dissemination. The Petitioner has not shown that there has been wide acceptance of his research findings in the field, that many scientists in the field have relied on his research in their own studies, or that they have deemed his work important in their own projects. As discussed, four of the Petitioner's scholarly articles garnered between one to three citations in other scientific publications. Such limited response is not indicative of the Petitioner's status as being on the very top in the field.

In addition, the Petitioner's research received some media attention: a publication interviewed him about his research and online sources summarized or referenced his work. However, he has not established that the extent of media attention and coverage demonstrates that he has achieved national or international acclaim. The limited reporting on his studies, although indicative of the field's general interest, does not illustrate that he has reached the very top of his field. The record also lacks information on the field's response after the reports. Without more, the published materials do not substantiate the Petitioner's sustained national or international acclaim.

The Petitioner's accomplishments include his original research projects, educational achievements, professional membership, writing and publishing activities, participation and presentation in conferences, receipt of awards and grants, and invitations to review scientific manuscripts. These achievements in the aggregate confirm that he is an able researcher who has worked on a number of

projects and gained the respect of his circle of colleagues, who believe he is capable of accomplishing more in the field. They do not, however, demonstrate that he has sustained national or international acclaim or is already one of the small percentage at the very top of his field.

III. CONCLUSION

The Petitioner has not demonstrated by a preponderance of the evidence that he is an individual of extraordinary ability. A review of the record in the aggregate does not confirm that he has distinguished himself to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. He, therefore, has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. The burden is on the Petitioner to show eligibility for the immigration benefit sought. Section 291 of the Act; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). The Petitioner in this case has not established by a preponderance of the evidence that he is an individual of extraordinary ability.

ORDER: The appeal is dismissed.

Cite as *Matter of T-S-*, ID# 17572 (AAO Aug. 23, 2016)