



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

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

MATTER OF C-G-

DATE: FEB. 24, 2016

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, an engineer who specializes in materials research and product development, seeks classification as an individual of “extraordinary ability” in the sciences. *See* Immigration and Nationality Act (Act) § 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). The Director, Nebraska Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

The classification the Petitioner seeks makes visas available to foreign nationals who can demonstrate extraordinary ability through sustained national or international acclaim and achievements that have been recognized in the area of expertise through extensive documentation. The Director determined that the Petitioner had not satisfied the initial evidentiary requirements set forth at 8 C.F.R. § 204.5(h)(3), which necessitate a one-time achievement or evidence that meets at least three of ten regulatory criteria. On appeal, the Petitioner submits a legal brief.

I. LAW

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

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

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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 the petitioner does not submit this evidence, then he or she must provide sufficient qualifying documentation that meets at least three of the ten categories 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 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 we 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 we examine “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

The Petitioner received a Master of Science degree in Metallurgical and Material Engineering from the [REDACTED] in 2004 and a Ph.D. degree in that field from the [REDACTED] in 2012. Since 2012, he has worked as a research and development assistant at the [REDACTED] a wood plastic composite manufacturer.

A. Evidentiary Criteria¹

The Director found the Petitioner met two of the necessary three criteria listed at 8 C.F.R. § 204.5(h)(3)(i) – (x). Specifically, the Director concluded that the Petitioner demonstrated his participation as a judge of the work of others in the field (8 C.F.R. § 204.5(h)(3)(iv)), and his authorship of scholarly articles in the field in professional publications (8 C.F.R. § 204.5(h)(3)(vi)). The Petitioner submitted a letter from the Editor-in-Chief of the [REDACTED], as well as an email regarding a manuscript he reviewed for the journal. In addition, the Petitioner provided copies of articles he authored that have appeared in scholarly journals, such as the [REDACTED] and [REDACTED]. As a result, we agree the Petitioner has satisfied these two criteria.

¹ We have reviewed all of the filings and will address those criteria the Petitioner asserts that he meets or for which he has submitted relevant and probative evidence.

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Accordingly, the issue at hand is whether the Petitioner meets a third criterion. On appeal, he asserts that he has provided evidence of his original contributions of major significance in the field (8 C.F.R. § 204.5(h)(3)(v)), as well as his performance in a leading or critical role for organizations or establishments that have a distinguished reputation (8 C.F.R. § 204.5(h)(3)(viii)). For the reasons discussed below, the Petitioner has not satisfied either of these additional criteria.

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

The Director found that the Petitioner did not meet this criterion. While acknowledging the numerous reference letters the Petitioner had submitted, the Director concluded that the prospective nature of the impacts identified and the limited number of citations to his published papers did not establish he met this criterion. On appeal, the Petitioner highlights letters of recommendation from those familiar with his work.² The Petitioner provided references from the following professionals:

- [REDACTED] Professor at the [REDACTED]
- [REDACTED] Professor at the [REDACTED] and Editor-in-Chief of the [REDACTED]
- [REDACTED] Rector of [REDACTED] Turkey;
- [REDACTED], Professor at [REDACTED]
- [REDACTED] Professor at [REDACTED]
- [REDACTED] Vice President of Scientific Affairs at [REDACTED]
- [REDACTED] Laboratory Manager at [REDACTED]
- [REDACTED] Technology Manager at [REDACTED]
- [REDACTED] Senior Materials Scientist, [REDACTED]
- [REDACTED] Research Professor at [REDACTED] Mexico;
- [REDACTED] Senior Staff Engineer at [REDACTED] and [REDACTED]
- [REDACTED] Professor at [REDACTED] and Chair of [REDACTED] Materials Science and Engineering Department.

Most of the letters the Petitioner submitted were from academics with whom he worked throughout the course of his studies. They spoke highly of the Petitioner as a colleague and a researcher. To satisfy this criterion, however, the evidence must establish that the Petitioner's contributions are not only original, but rise to the level of major significance in the field as a whole. *See* 8 C.F.R. § 204.5(h)(3)(v). Regardless of the field, the plain language of the phrase "contributions of major significance in the field" requires an impact beyond one's employer and clients or customers. *See Visinscaia*, 4 F. Supp. 3d at 135-36 (upholding a finding that a ballroom dancer had not met this criterion because she did not demonstrate her impact in the field as a whole).

On appeal, the Petitioner highlights letters from colleagues who provided positive assessments of his discoveries. A letter from [REDACTED] who supervised the Petitioner's master's thesis, stated that the

² We discuss only a sampling of these letters, but have reviewed and considered each one.

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Petitioner “successfully developed and designed the product [REDACTED] for the first time in Turkey.” [REDACTED] did not, however, explain the significance of this accomplishment or the impact it has had in the field.

Similarly, the Petitioner submitted two letters from [REDACTED] who discussed the Petitioner’s Ph.D. research as follows:

[The Petitioner] is the first scientist who attempts to improve the toughness of castables by using [REDACTED] in castables. [He] significantly established a novel process to produce high toughness self flow alumina refractories. Through his groundbreaking studies, [the Petitioner] unfolded the effect of additions of [REDACTED] and [REDACTED] on the exhibited toughness of self castable alumina refractories.

As of the date of filing, the Petitioner had presented these results and submitted a manuscript for publication. Neither the letter nor other evidence in the record contains further details on how these findings have significantly impacted the field, either for purposes of practical application or future academics. The research might have added to the general pool of knowledge, but investigating a novel hypothesis, without documented impact in the field, is not indicative of a contribution of major significance. Similarly, [REDACTED] stated that the Petitioner’s research “has had and will have direct applications in advanced power generation technologies which require increased operating temperatures of steel components which must perform without degradation at these temperatures.” This letter, however, did not explain how the “direct applications” have already impacted the field as a whole, and/or if the impact was so significant that it constituted contributions of major significance.

[REDACTED] stated: “[The Petitioner] has been able to show the outstanding potential of utilizing nanomaterials in refractory ceramics. This is a revolutionary research topic that has great potential value to the entity that can capture the advancements.” [REDACTED] letter did not contain further details regarding the Petitioner’s discoveries within that research topic and whether the Petitioner’s own contributions to that topic were themselves “revolutionary” or otherwise significant. It similarly did not explain why the Petitioner’s discoveries were of such great potential value. We need not accept primarily conclusory and unsubstantiated assertions. *1756, Inc. v. Attorney General of United States*, 745 F. Supp. 9, 15 (D.C. Dist. 1990). Lastly, we note that [REDACTED] and [REDACTED] referred to the potential value of the Petitioner’s research. Likewise, [REDACTED] affirmation that the Petitioner’s research “will give [refractory industries the] opportunity to use castables more efficiently,” does not demonstrate that the Petitioner meets this criterion. In sum, these letters from the Petitioner’s colleagues do not document how his results or methodologies have been of major significance in the field.

Some of the submitted letters are from professionals in industries for which the Petitioner’s research could have practical uses. [REDACTED] stated he is “confident” that his company, [REDACTED] could apply the Petitioner’s methods in its manufacturing processes. [REDACTED]

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██████████ affirmed that ██████████ was planning a pilot to determine if the Petitioner's research methods could be applied on a large scale. As noted in the Director's denial, these letters described prospective future applications of the Petitioner's research and were not indicative of its significance at the time of filing. ██████████ explained that while seeking "local testing capability," his laboratory approached ██████████ who recommended the Petitioner. ██████████ continued that his company used the Petitioner's discoveries to help develop new self-leveling underlayments as follows: "[A]fter digging more into [the Petitioner's] research we were able to formulate with reduced amounts of cement which enabled us to formulate a 'cost conscious' product that is competitive in the market place." At the time of ██████████ letter, the project was "in the scale up stage." This letter confirmed a practical application of the Petitioner's findings, but it did not discuss how his studies impacted the field. Evidence showing the Petitioner's work is practical and has attracted the attention of a few companies is insufficient to demonstrate that he has made contributions of major significance in the field.

In the denial, the Director noted that the Petitioner did not have a patent for the work that these companies will apply. On appeal, he states that discoveries can have major significance simply by virtue of their impact on the scientific research community. We agree; while patents can confirm the originality of a discovery and licensing or other use can reflect an impact, they are not the sole means of doing so. Nevertheless, it is the Petitioner's burden to provide some evidence of the impact of his original contributions. The record includes a ██████████ printout showing that he has authored four articles published in academic journals. The four papers have a combined total of four citations, with a citation frequency of not more than three per article. While not determinative, this level of reference is not consistent with published research that has been of major significance in the field.

The record includes an exhibit indicating that there were 428 total views of the Petitioner's 2013 ██████████ article. The material did not provide information on who viewed the article, or if the same individuals viewed the article multiple times. In addition, more probative than the number of views is whether those readers ultimately found the article useful. Furthermore, the record lacks evidence showing that 428 views signify that the article is examined more frequently than a typical published article in the field.

The Petitioner provided proof that he attended academic conferences and presented research. The record shows that the Petitioner presented his research findings at one international conference, while a coauthor presented the same findings at another. Presenting at conferences, whether domestic or international, suggests that the Petitioner has disseminated his findings. To meet this criterion, the Petitioner must document the impact in the field after dissemination. Other than reference letters stating in a conclusory manner that the field was receptive of the Petitioner's work, the record lacks sufficient evidence demonstrating the research impacted the field at a level consistent with a finding of contributions of major significance. In addition, the limited number of citations to the Petitioner's scholarly articles does not indicate that his findings constitute contributions of major significance.

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On appeal, the Petitioner maintains that the significance of his research is further demonstrated by his receipt of an award, [REDACTED] issued by [REDACTED]. The record does not contain primary evidence of the Petitioner's receipt of this award.³ Although the Petitioner affirms that [REDACTED] selected his article for this honor, the submitted reference letter from [REDACTED] did not support this statement. According to the letter, he came across the Petitioner's paper, [REDACTED] and felt that it would "be of importance to [REDACTED] database and to alert Engineers worldwide." The letter did not, however, mention a Key Scientific Article designation or any other award issued by [REDACTED]. Furthermore, although many of the letters commented on the prestige associated with the designation, none provided supporting details relating to the criteria under which the award is granted. [REDACTED] for example, said that "[the Petitioner] marked the first doctoral graduate of our program to receive this prestigious award based on his research and publications." Neither the letters nor other materials in the record include information such as the number of the awards given each year, the criteria used for selection, the qualifications of those making the selections, and what publicity is afforded to those who receive the designation. Without corroboration that this designation considers the impact of the findings rather than their promising nature, it is not indicative that the results reported in the Petitioner's article are contributions of major significance.

General, solicited letters from colleagues that do not specifically identify contributions or provide specific examples of how those contributions influenced the field are insufficient.⁴ *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009), *aff'd in part*, 596 F.3d 1115 (9th Cir. 2010). The opinions of experts in the field are not without weight and have been considered above. We may, in our discretion, use as advisory opinions statements filed as expert testimony. *See Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, we are ultimately responsible for making the final determination regarding a foreign national's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive proof of eligibility; we may, as this decision has done above, evaluate the content and corroboration of those letters as to whether they support a petitioner's eligibility. *See id.* at 795; *Visinscaia*, 4 F. Supp. 3d at 134-35 (upholding our decision to give minimal weight to vague, solicited letters from colleagues or associates that do not include details on contributions of major significance in the field); *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"); *Matter of Soffici*, 22 I&N Dec. 158, 165 (Assoc. Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

³ The regulation at 8 C.F.R. § 103.2(b)(2) requires primary evidence unless the Petitioner shows that such documentation either does not exist or is unavailable. The Petitioner did not assert the award certificate is unavailable and did not submit secondary evidence, such as media coverage of the issuance or a press release announcing the selection.

⁴ In 2010, the *Kazarian* court reiterated that our conclusion that "letters from physics professors attesting to [the petitioner's] contributions in the field" were insufficient was "consistent with the relevant regulatory language." 596 F.3d at 1122.

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In assessing whether the Petitioner has met this criterion, we consider the letters of reference, as well as corroborating documentation. In this case, the letters provided, considered in conjunction with the other evidence in the record, do not establish contributions of major significance. For these reasons, the Petitioner has not satisfied this criterion.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.

The Director found that the Petitioner did not meet this criterion, noting that, although he demonstrated his involvement with organizations with distinguished reputations, he did not show he performed a leading or critical role. A leading role should be evident from its position in the overall organizational hierarchy and the role's matching duties. Similarly, a critical role is apparent by its overall impact within the organization or establishment. On appeal, the Petitioner indicates that he has performed in a leading or critical role for [REDACTED] and the [REDACTED]

First, the Petitioner states that he played a leading role at [REDACTED] when he performed a 10-week engineering internship at [REDACTED] in the summer of 2008. The Petitioner provided a letter from the laboratory manager, [REDACTED] who noted that the Petitioner was a talented and skilled researcher. [REDACTED] said that the laboratory continues to build on the Petitioner's research. Neither this letter nor other evidence in the record suggests that the Petitioner's role as an intern can be classified as leading or critical for [REDACTED] as a whole, or even the facility. The fact that others have continued to pursue the project on which the Petitioner's spent 10-weeks is more indicative of the promise of the project than the Petitioner's role there. The record does not support the conclusion that the Petitioner's role as a summer intern, either by virtue of his position in the overall organizational hierarchy, or through his impact, satisfies this criterion.

Second, the Petitioner's resume indicates that he worked at [REDACTED] as a laboratory manager, teaching assistant, and research assistant from 2006 to 2012 while pursuing his Ph.D. degree. [REDACTED] listed the Petitioner's academic and research achievements, and stated that his department experienced an increased enrollment because of "the collective accomplishments of individuals like [the Petitioner]'s work that help promote our faculty and program." [REDACTED] also provided information on the Petitioner's efforts as the laboratory manager, where he updated teaching laboratories and teaching assistant training. This letter confirmed that the Petitioner was a productive doctoral student, whose achievements had a positive impact on those around him. The record, however, does not establish that this laboratory enjoys a distinguished reputation independent of [REDACTED]. Accordingly, at issue is whether the Petitioner played a critical or leading role within either [REDACTED] or the department, as a whole. The record, however, does not include information in regard to how the Petitioner's various positions fit within the overall hierarchy of the university or department, or how his positions impacted either organization as a whole. [REDACTED] acknowledged that although the Petitioner has positively impacted the department, the increased enrollment could not "be attributed to any single factor or individual."

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Lastly, the Petitioner asserts that he has performed in a leading or critical role for his employer. The Petitioner provided a letter from [REDACTED] Research and Development Manager at the [REDACTED] who supervised the Petitioner at the company. [REDACTED] stated that the business has employed the Petitioner as a Research and Development Assistant since September 2012, and that his responsibilities in this position “focused on new product development, process improvement, cost analysis, and new formula designs,” as well as improving manufacturing processes. [REDACTED] characterized the Petitioner as a “goal-oriented researcher committed to excellence.” This letter confirmed that the Petitioner was a respected employee and performed tasks typical for engineers in research and development departments. To meet this criterion, however, the Petitioner must show that he has played a leading or critical role within the organization as a whole. No information has been presented regarding the Petitioner’s position within the organization’s overall hierarchy, or regarding his impact on the organization as a whole. Without more, the letter from [REDACTED] regarding the Petitioner’s employment is not sufficient to demonstrate a leading or critical role within the corporation. For the above reasons, the Petitioner has not met the plain language requirements of this criterion.

B. Summary

As noted above, the documentation provided satisfies only two of the regulator criteria. As a result, the Petitioner has not submitted the required initial evidence of either a one-time achievement or documents that meet at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

III. CONCLUSION

The material submitted in support of extraordinary ability must show that the individual has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of his or her field of endeavor. Had the Petitioner satisfied at least three evidentiary categories, the next step would be a final merits determination that considers all of the filings 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 field of endeavor,” and (2) that the individual “has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise.” 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20 (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). Although we need not provide the type of final merits determination referenced in *Kazarian*, a review of the record in the aggregate supports a finding that the Petitioner has not established the level of expertise required for the classification sought.⁵

⁵ We maintain *de novo* review of all questions of fact and law. In any future proceeding, we maintain the jurisdiction to conduct a final merits determination as the office that made the last decision in this matter. 8 C.F.R. § 103.5(a)(1)(ii); *see also* INA §§ 103(a)(1), 204(b); DHS Delegation Number 0150.1 (effective March 1, 2003); 8 C.F.R. § 2.1 (2003); 8 C.F.R. § 103.1(f)(3)(iii) (2003); *Matter of Aurelio*, 19 I&N Dec. 458, 460 (BIA 1987) (holding that legacy INS, now USCIS, is the sole authority with the jurisdiction to decide visa petitions).

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The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the Petitioner's burden to establish eligibility for the immigration benefit sought. § 291 of the Act. Here, the Petitioner has not met that burden.

ORDER: The appeal is dismissed.

Cite as *Matter of C-G-*, ID# 15547 (AAO Feb. 24, 2016)