



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

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

MATTER OF G-K-

DATE: JAN. 14, 2016

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a chemist, 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 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 and additional exhibits.

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.

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 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 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

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). We address the criteria sought by the Petitioner below.

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

In her initial submission and in response to a request for evidence (RFE), the Petitioner indicated that she met this criterion. On appeal, however, she does not contest the Director’s finding that she did not provide documentation of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. The Petitioner, therefore, abandoned this criterion on appeal. *See Sepulveda v. U.S. Att’y Gen.*, 401 F.3d 1226, 1228 n.2 (11th Cir. 2005); *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885, at *1, *9 (E.D.N.Y. Sept. 30, 2011) (finding the plaintiff’s assertions abandoned as he failed to raise them on appeal).

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

Matter of G-K-

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.

In her initial submission and in response to an RFE, the Petitioner indicated that she met this criterion. On appeal, however, she does not contest the Director's finding that she did not provide documentation of 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, therefore, also abandoned this criterion on appeal. *See Sepulveda*, 401 F.3d at 1228 n. 2; *Hristov*, 2011 WL 4711885, at *1, *9.

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 Director found the Petitioner met this criterion. The Petitioner submitted evidence showing that she peer-reviewed scholarly articles for [REDACTED] and [REDACTED]. As a result, we agree that the Petitioner has met 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.

To satisfy this criterion, the documentation 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); *see also Visinscaia*, 4 F.Supp.3d at 135-136. In her RFE response, the Petitioner maintained that her contributions of major significance are evidenced by the recognition given to her published research findings. At the time of her initial submission, the Petitioner had authored two articles cited by others in the field. According to a [REDACTED] print-out she provided, one of these articles had three citations, while the other had two. Citation history can be indicative of whether a publication has had an impact beyond a researcher's own circle of collaborators. If citations are relied upon to demonstrate an impact consistent with a contribution of major significance, we evaluate the number and quality of the citing references to determine whether they confirm the necessary influence on the field. In this case, although [REDACTED] states the Petitioner's first paper had three citations, a review of the results shows all three refer to the same citing article.² This means that, at the time of this petition's submission, three articles had cited to the Petitioner's work. This level of reference by others in the field does not reflect recognition consistent with a contribution of major significance.

The Petitioner has identified three other research papers she is authoring which have either been submitted for review or are in progress. As a result, they have not yet been published or released to

² *See* [REDACTED] accessed on January 5, 2016, and incorporated into the record of proceeding.

Matter of G-K-

the field. Although the findings published therein may be of significance in the future, we must evaluate the Petitioner's contributions to the field currently in existence. *See* 8 C.F.R. § 103.2(b)(1), (12) (stating eligibility must be established at the time of filing); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). Without additional evidence showing that the research results have already contributed to the field, future articles that have yet to be disseminated in the field are not sufficient to meet this criterion.

The Petitioner submitted evidence of three scholarly articles for which she is not listed as an author, but collaborated on the underlying research. Letters from the articles' authors express gratitude to the Petitioner for her efforts, yet note that her contributions were not substantial enough to merit a designation of authorship. Although we recognize the cooperative nature of scientific research, each of these articles has at least five listed authors. Mere confirmation of the Petitioner's participation at a level below authorship credit does not show the study's results are her own original contributions.

The Petitioner also provided letters of support from experts in her field familiar with her work.³ We consider the Petitioner's references and may use statements submitted as expert testimony as advisory opinions. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, we must also evaluate the content of the letters as to whether they support the Petitioner's eligibility. *See Visinscaia*, 4 F. Supp. 3d at 134-35 (concluding that USCIS' decision to give limited weight to uncorroborated assertions from practitioners in the field was not arbitrary and capricious). The Petitioner indicates that the letters explain how her research has been influential in the following ways:

- Data garnered from work with a [REDACTED] special emphasis project called ' [REDACTED] was used to provide comments to the Food Safety Modernization Act with respect to irrigation water procedures;⁴
- The Petitioner's research was used to help the [REDACTED] Food Safety Inspection Services (FSIS) develop Salmonella guidelines in the poultry industry; and
- The Petitioner's recommendations were introduced to the guidelines used by mango growers in Mexico in order to meet [REDACTED] specifications for export to the United States.

On appeal, the Petitioner submits a letter from the head of [REDACTED]-funded research project, [REDACTED] Director of the [REDACTED] and a professor at [REDACTED] notes the Petitioner was hired to work on a special project under the grant involving parallel experiments conducted in Texas and Mexico to determine the effect of season and irrigation water on surface properties and natural microflora of crops. She describes this and other research and states that the findings were used to comment on proposed federal regulations under the Food Safety Modernization Act. Although [REDACTED] writes that the Petitioner led certain experiments under the grant, at issue is whether the

³ We discuss only a sampling of the submitted letters, but have reviewed and considered each one.

⁴ The Petitioner lists another contribution that relates to this bullet point and will be considered in that context.

Matter of G-K-

results have already impacted the field. Though the letter demonstrates that the Petitioner participated in research under a grant that produced relevant results which formed the basis for commentary, it does not show that the Petitioner's results have already influenced [REDACTED] rulemaking.

The Petitioner also submitted an article entitled "[REDACTED]" from a [REDACTED] Texas newspaper, [REDACTED]. The piece reports on an interview with [REDACTED], a professor and horticultural specialist at the [REDACTED]. It discusses the lobbying efforts of farmers and scientists to change regulations about to be promulgated under the Food Safety Modernization Act: "[REDACTED] and others from Texas and California presented scientific research showing that E. coli counts varied widely in water, but most importantly that after five days in a field, those E. coli counts dropped dramatically." The Petitioner provided a letter from [REDACTED] confirming that the Petitioner has been a [REDACTED] postdoctoral employee who worked on the university's grant. However, neither the letter nor the article gives insight into the ultimate impact of the comments to a proposed regulation.

Another letter the Petitioner submits on appeal is from [REDACTED] Research Microbiologist at the [REDACTED]. It addresses the impact of the [REDACTED] project and states as follows:

The information obtained has already been used to develop education and training material for industry and Food and Drug Administration (FDA) inspectors, delivering them as workshops and electronic-education modules in Texas, Arizona, and Mexico. The work has also benefited the farmers in deciding the cropping systems and the best agricultural practices that can be employed for reducing the microbial contamination prior to the harvest of the crops.

The record does not contain corroborating evidence regarding application of the Petitioner's results. [REDACTED] does not give further details regarding how the Petitioner's work has been implemented for FDA training. Similarly, he did not elaborate or provide details on how her research was deployed to and used by farmers. Without supporting materials that clarify the nexus between the Petitioner's work and the training and application by farmers, the Petitioner has not demonstrated the impact of her work.

The Petitioner also states on appeal that her research helped develop Salmonella guidelines in the poultry industry. One of the Petitioner's two published papers, "Effect of kosher salt application on microbial profiles of poultry carcasses," deals with Salmonella and poultry. The [REDACTED] print-out reflects that this article has three citations.⁵ The Petitioner does not give any other evidence of the article's recognition in the field or impact on the poultry industry. The record

⁵ As noted above, although [REDACTED] states this article has three citations, a review of the results indicates that it counts the same citing article three times.

Matter of G-K-

contains a copy of the article, which concludes that “kosher salt is an effective antimicrobial that needs further investigation.” In his letter of support, [REDACTED] affirms that the Petitioner’s work “would help [REDACTED] in developing Salmonella guidelines to the poultry industry.” [REDACTED] gives no other details regarding how the Petitioner’s findings have affected the poultry industry or [REDACTED] standards. The record does not contain copies of poultry guidelines or an explanation as to the ways in which the Petitioner’s research has helped develop preventative procedures regarding Salmonella. As a result, the Petitioner has not demonstrated that her work on Salmonella and poultry represents a contribution of major significance in the field.

The fourth contribution identified by the Petitioner involves the introduction of her recommendations to the mango industry. On appeal, the Petitioner submits a letter from [REDACTED] Laboratory Researcher at [REDACTED] stating the following regarding the Petitioner’s work: “When her thesis was published in [REDACTED] 2006, most of [the Petitioner’s] recommendations were introduced on the guidelines used by mango growers.” [REDACTED] notes that the Petitioner recommended that growers use chemicals in the cold water dips for mangoes that follow hydrothermal treatment, as Salmonella is capable of surviving the initial procedure. The Petitioner produced a copy of a paper she authored, “[REDACTED]” that contains this recommendation. The Petitioner does not, however, provide evidence to corroborate the statement that her recommendations have been adopted by the mango industry. The record contains no additional information regarding mango guidelines, such as copies of the guidelines, information about what organization issues them, or any other documents regarding industry protocol.

In the same letter, [REDACTED] later writes: “Although [the Petitioner’s thesis] has not been cited, the industry has already taken note of this research. Mango growers have started implementing some of these suggestions. In 2009, a Report to the [REDACTED] highlighted some of the same recommendations” The record contains no copy of the 2009 report, any mango grower guidelines, or other documentation to corroborate that the Petitioner’s recommendations have been incorporated into industry guidelines or implemented by growers. To satisfy this criterion, the Petitioner must show an impact on the field. While the Petitioner presented her thesis at a 2007 conference, the record lacks confirmation of its impact in the field upon dissemination. Without consistent details or corroborating evidence to support the statements made by [REDACTED] the recommendation letter does not demonstrate that the Petitioner’s research and recommendations for mangoes constitute a contribution of major significance.

Many of the other letters submitted by the Petitioner affirm the potential future impact of her work. For example, a letter from [REDACTED] Professor at [REDACTED], discussed the Petitioner’s dissertation work on Salmonella and noted that “the findings from her research can be exploited by the chemical industry to design next generation chemicals so that they do not result in over expression of virulence related genes.” Although this potential may exist, the record contains no evidence suggesting that the chemical industry has already taken such steps. To satisfy this criterion, regardless of the field, the Petitioner must show her original contributions are already of major significance in the field as a whole. *See Visinscaia*, 4 F. Supp. 3d 126, 134-35 (D.D.C. 2013)

Matter of G-K-

(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). In this and other instances of potential impact, the possibility of significance in the future is not sufficient to satisfy this criterion.

In this case, the letters confirm the overall importance of the Petitioner's area of research, contain favorable opinions of the Petitioner's work, and show that she is professionally respected. Nevertheless, the references are not accompanied by sufficient explanation or corroboration to satisfy this regulatory criterion. As a result, the evidence does not demonstrate that the Petitioner has made original contributions of major significance in the field and does not satisfy the plain language of this criterion.

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 the Petitioner satisfied this criterion. The Petitioner submitted documentation to show that she has authored two scholarly articles published in the [REDACTED] and the [REDACTED]. As a result, we agree that the Petitioner has met the plain language requirements of this criterion.

B. Summary

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

III. CONCLUSION

The evidence submitted in support of a petition seeking 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 submissions 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 alien 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.

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

Matter of G-K-

establish eligibility for the immigration benefit sought. Section 291 of the Act. Here, the Petitioner has not met that burden.

ORDER: The appeal is dismissed.

Cite as *Matter of G-K-*, ID# 15119 (AAO Jan. 14, 2016)