



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

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

MATTER OF A-P-W-

DATE: NOV. 14, 2016

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a medical researcher specializing in radiology, 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 of the Nebraska Service Center denied the petition, concluding that the Petitioner had not established that he meets at least three of the evidentiary criteria as required.

The matter is now before us on appeal. In his appeal, the Petitioner submits additional documentation and maintains that the Director erred by not considering the evidence supporting the reference letters and going beyond the plain language of the regulatory criteria.

Upon *de novo* review, we will sustain the appeal.

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,

*Matter of A-P-W-*

- (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 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) (including items such as awards, published material in certain media, and scholarly articles).

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 is a staff radiologist and assistant professor at the [REDACTED]. He is on the editorial board for the [REDACTED]. He has served on an expert panel for self-assessments and continuing medical education courses, and has authored several articles that have been recognized, well cited, and referenced in national guidelines. The Director determined that while the Petitioner had participated as a judge of the work of others<sup>1</sup> and authored scholarly articles,<sup>2</sup> he had not demonstrated contributions of major significance in the field.<sup>3</sup> On appeal, the Petitioner presents an article on evaluating researchers in the life sciences. He maintains that the Director incorrectly dismissed the letters without considering

<sup>1</sup> 8 C.F.R. § 204.5(h)(3)(iv).

<sup>2</sup> 8 C.F.R. § 204.5(h)(3)(vi).

<sup>3</sup> 8 C.F.R. § 204.5(h)(3)(v).

(b)(6)

*Matter of A-P-W-*

the evidence supporting them and went beyond the plain language in the contributions criterion by comparing the Petitioner's citations with those of others in his field. For the reasons discussed below, we find that the Petitioner has established his qualifying contributions and that the record in the aggregate is consistent with extraordinary ability.

A. Evidentiary Criteria.

As noted, the Director determined that the Petitioner has participated as a judge of the work of others and authored published scholarly articles.<sup>4</sup> At issue is whether the Petitioner meets a third criterion. The Petitioner contends that he has made contributions of major significance in the field.<sup>5</sup> Without addressing the content of the reference letters and whether the record supported the information in those letters, the Director concluded that such letters are advisory only. The Director then acknowledged that the Petitioner had published articles, but noted that citations have more probative value in determining the impact of those articles. Finally, the Director compared the Petitioner's citations in the aggregate with the highest total citation levels in the field and found that the Petitioner's citation numbers were not indicative of contributions of major significance.

On appeal, the Petitioner notes that he did not rely solely on reference letters, but offered them to clarify and explain other evidence in the record. The Petitioner further states that comparing the Petitioner's citations in the aggregate with the same number for others in the field is problematic for two reasons. First, a comparison with others in the field is more appropriate in the final merits determination and is not relevant to whether the Petitioner's contributions have been of major significance. Second, the comparison is meaningless because a researcher who has a lengthy career with numerous papers that have garnered minimal cites individually could have more citations in the aggregate than a newer researcher with a smaller number of articles that individually have garnered significant citation. The Petitioner references information in his initial submission that places his citations in the context of other papers published in the same year. Finally, the Petitioner identifies items that the Director did not consider, such as inclusion of the Petitioner's work in clinical guidelines. We agree with all of these points.

The Petitioner submitted several reference letters that detail how the Petitioner's work has been influential and are supported by citations and radiology guidelines. [REDACTED] director of [REDACTED] discusses the Petitioner's research on [REDACTED] as an imaging tool for Mesenteric Ischemia (MI). [REDACTED] explains that the Petitioner examined indirect imaging features, and combined them with previous patient outcomes to create a guideline for optimal CT imaging factors when evaluating suspected MI. The citation numbers for the Petitioner's article on this topic are indicative of the field's recognition of his work.

---

<sup>4</sup> 8 C.F.R. § 204.5(h)(3)(iv), (vi).

<sup>5</sup> 8 C.F.R. § 204.5(h)(3)(v).

(b)(6)

*Matter of A-P-W-*

\_\_\_\_\_ director of \_\_\_\_\_ discusses the significance of the Petitioner's most cited paper on \_\_\_\_\_. In this research, the Petitioner compared conventionally used scanner with single-source scanners, outlining the pros and cons for each system. \_\_\_\_\_ maintains that the study "offers valuable information on the quantification and characterization of renal masses, and also provides ways to reduce patient radiation exposure by identifying situations in which unenhanced scanning can be eliminated."

\_\_\_\_\_ an assistant professor of radiology at \_\_\_\_\_ and medical director of \_\_\_\_\_ explains that the frequent imaging with CT enterography (CTE), which is necessary to evaluate patients with Crohn's Disease and Ulcerative Colitis, exposes these individuals to repeated radiation. \_\_\_\_\_ confirms that the Petitioner developed a low dosage protocol, "which has quickly established itself as one of the best new techniques in this area, and it has already made its mark on clinical practice." In support of this statement, \_\_\_\_\_ advises that the \_\_\_\_\_ has included this technique in its evidence-based guidelines, termed Appropriateness Criteria. Corroborating this information, the record contains the guidelines themselves, which cite the Petitioner's work in this area. \_\_\_\_\_ continues that he has built upon the Petitioner's studies, using his results "as a landmark against which we compared the performance of our own technique in order to assess its viability." To verify this attestation, the Petitioner presented articles by \_\_\_\_\_ which reflect a comparison to the Petitioner's findings.

\_\_\_\_\_ chair of the \_\_\_\_\_ at the \_\_\_\_\_ addresses the Petitioner's 2012 article on ultrasound evaluations of scrotal lesions. \_\_\_\_\_ explains that the \_\_\_\_\_ guidelines reference the Petitioner's work on this topic. The guidelines, which cite the Petitioner's article, are in the record. \_\_\_\_\_ also confirms that this text "became a key in our recommended guidelines for assessing a patient for scrotal ultrasound, and they have been wholly incorporated into the final recommendations of the committee." \_\_\_\_\_ next notes that other medical guidelines also incorporate the Petitioner's results, including those of the \_\_\_\_\_ and the \_\_\_\_\_. The guidelines are part of the record and support \_\_\_\_\_ statement.

\_\_\_\_\_ an associate professor in the \_\_\_\_\_ at the \_\_\_\_\_ explains that he had difficulty clearly defining features that can be used to diagnose MI before he came across the Petitioner's paper. Not only does \_\_\_\_\_ confirm that the Petitioner's findings were useful in his clinical practice, he states that he uses it as an instructional tool for colleagues and students. Another reference, \_\_\_\_\_ an assistant professor of radiology at the \_\_\_\_\_ also uses the Petitioner's work as a source in lectures, talks to residents, and to treat patients.

---

<sup>6</sup> While the Petitioner is not the first author of this article, we recognize the collaborative nature of scientific research and note that the record contains a letter from the lead author confirming the importance of the Petitioner's contribution to this work.

*Matter of A-P-W-*

In addition to the letters and guidelines that support them, the record also contains the Petitioner's scholarly articles, the certificates recognizing those articles, and his citation record. Certificates contemporaneous with the dissemination of research are more relevant to the promise of the work than its ultimate impact. Nevertheless, we acknowledge that the Petitioner has been recognized for several presentations. While we agree with the Director that citations are useful in evaluating the influence of an individual article, the Petitioner correctly points out on appeal the problems with comparing the Petitioner's citations in the aggregate with the total number of citations other members of the field have garnered. Specifically, the plain language of the criterion does not require such a comparison and an experienced and prolific author whose individual articles receive a minimal number of citations can conceivably show more total citations than a less experienced researcher with a smaller number of articles that have been individually influential. As noted by the Petitioner on appeal, he provided data on citations for articles published in various years, confirming that four of his articles from 2011 or later have garnered enough citations to place them in the top 10 percent of cited articles in clinical medicine published the same year. While it may take a few years for the truly influential articles to stand out among other contemporaneous articles, the citations are not the only objective evidence of the Petitioner's influence in the record. As discussed above, his work is referenced in three sets of national guidelines in two countries.

Ultimately, the Petitioner has provided reference letters that identify contributions, detail how they have influenced specific institutions in the field, and are supported by guidelines and citations. All of this evidence in the aggregate establishes that the Petitioner has made contributions of major significance in the field.

#### B. Final Merits Determination

In the final merits determination, we consider the totality of the record to determine if a 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,<sup>7</sup> making him one of the small percentage who have risen to the very top of the field of endeavor. If so, a petitioner 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.

The Petitioner has performed peer-review for several journals. In its official materials, [REDACTED] names the Petitioner as a member of its "expert panel." In his role for the [REDACTED] the Petitioner developed some of the association's continuous professional improvement self-assessment modules and reviewed their continuing medical education coursework. Finally, the [REDACTED]

---

<sup>7</sup> While the statute requires extensive documentation, eligibility is to be determined not by the quantity of the filings alone but by their quality. *Chawathe*, 25 I&N Dec. at 376 (citing *Matter of E-M-*, 20 I&N Dec. 77, 80 (Comm'r 1989)). We "examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence." *Id.*

(b)(6)

*Matter of A-P-W-*

names the Petitioner as one of its limited number of editors in its official materials. These accomplishments, in the aggregate, are consistent with a conclusion that the Petitioner is recognized in the field.

The Petitioner's research contributions and articles are also notable. As discussed above, the Petitioner's studies have been cited nationally and internationally and associations in the United States and Australia mention this work in their guidelines. Several independent references not only confirm the overall importance of the Petitioner's area of research and its promise, but identify specific ways in which the Petitioner has already influenced the field as a whole. Overall, his published research contributions are indicative of his status among the small percentage at the top of his field.

characterizes the Petitioner as "a physician of the highest caliber, who is recognized as an expert by his peers." concludes that the Petitioner "is clearly one of the top clinical researchers in this area." The record in the aggregate, including exhibits not mentioned in this decision, supports these statements and that of associate chair for clinical research at the advising that the Petitioner is "an elite member of the medical research community."

### III. CONCLUSION

The Petitioner submitted the requisite initial evidence and established his extraordinary ability when considered in a final merits decision. Section 203(b)(1)(A)(i) of the Act. By demonstrating that he seeks to continue to work in his area of extraordinary ability, and there being no indication otherwise, we are satisfied that the Petitioner's entry will substantially benefit prospectively the United States. Section 203(b)(1)(A)(iii) of the Act. Therefore, the Petitioner has met his burden of proof. Sections 203(b)(1)(A), 291 of the Act.

**ORDER:** The appeal is sustained.

Cite as *Matter of A-P-W-*, ID# 82877 (AAO Nov. 14, 2016)