



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

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

• MATTER OF H-L-

DATE: JULY 13, 2017

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a biomedical software developer, 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 record did not establish, as required, that the Petitioner had met at least three of the ten regulatory criteria.

On appeal, the Petitioner asserts that he satisfies two criteria in addition to the two the Director found that he meets.

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

I. LAW

Section 203(b)(1)(A) of the Act describes qualified immigrants for this classification as follows:

- (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 two options for satisfying this classification's initial evidence requirements. First, a petitioner can demonstrate a one-time achievement that is a major, internationally recognized award. Alternatively, he or she must provide 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).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether 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. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010).¹ This two-step analysis is consistent with our holding that the "truth is to be determined not by the quantity of evidence alone but by its quality," as well as the principle 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." *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

II. ANALYSIS

The Petitioner is a senior computer scientist at the [REDACTED]. Previously, he was a postdoctoral researcher at [REDACTED] and an engineer for companies in China. He received his Ph.D. degree from the [REDACTED] in 2009. The reference letters focus on his accomplishments at [REDACTED] and [REDACTED]. The Director concluded that the Petitioner had judged the work of others and authored scholarly articles. 8 C.F.R. § 204.5(h)(3)(iv), (vi). The record, which contains confirmation of the Petitioner's services as a peer reviewer of manuscripts for multiple journals and his published articles, supports the Director's determination on those criteria.

At issue is whether the Petitioner meets a third criterion. On appeal, he maintains that he has also made contributions of major significance in the field and performed a leading or critical role for an organization or establishment with a distinguished reputation. 8 C.F.R. § 204.5(h)(3)(v), (viii). For the reasons discussed below, he has not satisfied either of those criteria.

Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field. 8 C.F.R. § 204.5(h)(3)(v).

The Director concluded that without evidence of citations to the Petitioner's articles or documentation of patents, he could not meet this criterion. On appeal, he asserts that his contributions are "not manifested via publications or patents," and that the Director erred by not considering the reference letters. As we will detail below, however, two of his references do single

¹ This case discusses 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).

out his articles as reflecting his contributions. Regardless, while a widely cited article can be indicative of the influence of that article, influential articles are not the only means of demonstrating an impact in the field commensurate with a contribution of major significance. If not relying on citations, it remains the Petitioner's burden to satisfy this criterion with other evidence. While we agree that reference letters can provide useful information for this criterion, in this case, they do not support a finding that the Petitioner has made contributions of major significance in the field of biometrics computer programming.

The Petitioner offered several letters from his colleagues at [REDACTED] describing the programs he advanced there. [REDACTED] an associate professor and director of oncology service informatics at the Department of [REDACTED] at [REDACTED] explains that he recruited the Petitioner after he proposed a solution for a problem the research group was facing. According to [REDACTED] his group developed three major tools due to the Petitioner's assistance making "quick and powerful analysis of big sets of altered genes to prioritize and underline those of them which are likely cancer drivers."

[REDACTED] the director of the [REDACTED] at [REDACTED] provides specific information about the Petitioner's three tools and an additional project. First, he "developed and tested a number of important computational methods for building the optimal sequencing panels for detection of mutations in cell-free circulated tumor DNA." Second, he advanced the "[REDACTED] to facilitate cancer-focused analysis of large sets of genes. Third, he worked on the "[REDACTED] which "summarizes all available knowledge on molecular mechanisms of ovarian cancer to determine major driver alterations." Finally, his laboratory "began non-invasive prenatal testing – a new type of genetic test that screens for birth defects and inherited diseases by sequencing a baby's DNA that is naturally found in the mother's blood." For this last project, the Petitioner resolved a memory overload problem by "proposing a new adaptive parallel algorithm."

[REDACTED] co-founder and co-director of the [REDACTED] discusses his collaboration with the Petitioner and [REDACTED] explains the importance of diagnosing cancer from tumor DNA in the blood and the difficulties caused by the individualized spectrum of DNA mutations for each malignancy. He affirms that the Petitioner's models are currently being developed and tested.

[REDACTED] dean of [REDACTED] explains the Petitioner's work on the [REDACTED] This product "visualizes gene interaction networks in [the] context of major cancer pathways." In developing this tool, the Petitioner "solved a number of complicated problems," such as integrating databases and constructing gene networks and meta-networks, by using his "specialized expertise in order to devise unique software solutions."

[REDACTED] director of [REDACTED] at [REDACTED] confirms that he is working with the Petitioner on the [REDACTED] designed to assist clinicians who treat that cancer in making therapeutic treatment decisions. He explains that these decisions rest on

identifying which tumor mutations are “drivers” and which are “passengers.” The proposed diagnostic tool in development would use sophisticated computer algorithms to produce clinically useful information.

With respect to the impact of the Petitioner’s work, [REDACTED] asserts that it has been “appreciated in the labs of [REDACTED], the [REDACTED] of [REDACTED] and [REDACTED].” The record includes letters from these institutions and the [REDACTED]. For the reasons discussed below, however, while these references confirm the promising and useful nature of the Petitioner’s tools, they do not corroborate his impact in the field at a level consistent with a contribution of major significance.

[REDACTED] the Petitioner’s academic advisor at [REDACTED] describes how he expanded on [REDACTED] results with mass spectrum data. Specifically, the Petitioner “developed a method which handles a combination of voice signal processing and machine learning, simultaneously.” [REDACTED] characterizes the project as a “major contribution” because of its importance to him and his collaborators, which shows “the great influence [the Petitioner’s] work has had on his field.” That the Petitioner’s academic advisor and his colleagues have utilized the Petitioner’s tools and algorithms is insufficient to show his wider impact in the field as a whole.

[REDACTED] chair of the Department of Computer Science at [REDACTED] asserts that the Petitioner’s algorithms, which he published and presented, have “drawn significance [*sic*] attention from colleagues around the world due to innovative ideas and results.” Where a reference specifically contends that published articles or talks about certain projects have contributed to the field, citations are useful data to corroborate such a statement, although not the only type of evidence. The record contains no documentation of citations. Instead, [REDACTED] avers that the field’s interest is evident from the Petitioner’s selection as a guest lecturer internationally. [REDACTED] does not identify, and the record does not establish, however, the location(s) where the Petitioner has been a guest lecturer. Accordingly, [REDACTED] letter does not confirm that the Petitioner’s contributions are of major significance in the field.

[REDACTED] vice-chair of the Departments of [REDACTED] at [REDACTED] discusses her collaboration with the Petitioner on a [REDACTED] project at [REDACTED]. She confirms that he created a computational cancer genomic data analysis pipeline for use in one laboratory at [REDACTED]. While she characterizes the tool as “very effective,” she does not explain its wider significance or use in the field.

[REDACTED] a professor at the [REDACTED] affirms that the Petitioner contacted him to review [REDACTED]. He professes no prior knowledge of the Petitioner or the tool. [REDACTED] describes how it is “useful” and “remarkable,” with unique features. He also asserts that the ability to create such a tool distinguishes the Petitioner from his peers. He does not, however, suggest that the [REDACTED] or another institution is considering utilizing the product.

Similarly, [REDACTED] a postdoctoral researcher at [REDACTED] affirms that he examined the Petitioner's [REDACTED] tool after receiving his request to do so. [REDACTED] does not suggest he had previously heard of the Petitioner or [REDACTED]. He characterizes the tool as "useful," "remarkable," "unique," and "flexible." He does not, however, indicate that [REDACTED] or any other independent laboratory is using the program.

The only independent letter affirming any utilization of the Petitioner's work is from [REDACTED] head of the [REDACTED] at [REDACTED]. She recounts that she contacted [REDACTED] about [REDACTED] tool for biological annotation of large sets of genes, who then introduced her to the Petitioner. She confirms that reading the Petitioner's articles on algorithms and new approaches assisted her with her own research. As in [REDACTED] letter, she identifies specific aspects of the Petitioner's research that she either utilized or that made her respect his work. As noted above, the record contains insufficient evidence that these articles have garnered any citations. [REDACTED] does not indicate that she has cited the articles she names in her letter or detail how she has otherwise relied upon his work. Finally, she describes his development of several smart phone apps that are available at a specified website. She does not provide the sales or download figures for these apps and the record does not contain documentation about their usage.

In summary, the Petitioner has offered letters that favorably appraise his software tools and abilities but do not reflect that his contributions are of major significance in the field. While the absence of citations does not preclude a favorable finding under this criterion, the record must contain other evidence of an influence or impact consistent with a contribution of major significance in the field. The Petitioner has submitted a single letter from an independent researcher, [REDACTED] who affirms her use of his work, and provides some details about the impact of his research. This evidence, together with other documentation, however, is insufficient to demonstrate the Petitioner has satisfied this criterion.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. 8 C.F.R. § 204.5(h)(3)(viii).

The Director concluded that the letters addressed the Petitioner's role for a department and specific projects, but did not demonstrate a leading or critical role for an organization or establishment. On appeal, the Petitioner asserts that the Director did not sufficiently consider the evidence and erroneously applied a federal district court decision involving a table tennis player. In general, a leading role is evident from the role, its duties, and how it fits within the overall hierarchy of the organization. The record does not contain any hierarchical information about [REDACTED] including how many senior computer scientists it employs and the chain of command. Similarly, the record does not verify that the role of a postdoctoral researcher is a leading role for [REDACTED] or the Department of Computer Science.

The remaining question is whether the Petitioner performed a critical role for [REDACTED] or [REDACTED]. This type of role should be apparent from an individual's impact on the entity. Regardless of whether the decision the Director referenced, *Noroozi v. Napolitano*, 905 F. Supp. 2d 535, 544-45

(S.D.N.Y. 2012), is persuasive case law, the regulation requires that the Petitioner's role be critical for an organization or establishment that has a distinguished reputation. If it is the Petitioner's position that his role was critical to a specific department or research team, he must demonstrate that the smaller entity, independently of the larger institution, enjoys the requisite reputation.

The Petitioner initially provided a letter from [REDACTED] outlining his role for a [REDACTED] sponsored project. On appeal, he no longer maintains that this work meets the criterion. Not every researcher who contributes to an [REDACTED] funded project plays a critical role for the organization where the research occurred. The record does not contain sufficient detail explaining how the Petitioner's development of algorithms for this project served a critical role for [REDACTED] or the individual department where he was working.

[REDACTED] affirms that the Petitioner "played a central role in the development of new-generation integrative tools bridging together the basic knowledge of cancer genomics with the concrete tasks of clinical interpretation of mutations in tumors of particular cancer patients." He singles out [REDACTED] and the [REDACTED]. He concludes: "The advances in cancer treatment that [REDACTED] is making through the creation of tools as described above would not have been possible without the critical input" of the Petitioner. As [REDACTED] indicates the translator is still in development, and as such, its performance unconfirmed, the Petitioner has not sufficiently demonstrated his critical role for [REDACTED] through his work on that project. We consider [REDACTED] below.

The record does not confirm the impact of [REDACTED] at [REDACTED]. The Petitioner offered downloaded information from [REDACTED] website. One of the posts entitled: [REDACTED] discusses the achievements of [REDACTED] in "developing ground breaking techniques to generate massive data sets that they are using to create predictive models of the human genome – and of common human diseases such as cancer, inflammatory bowel disease, and Alzheimer's disease." The post does not mention [REDACTED] and there are no materials indicating that [REDACTED] promotes the tool to attract patients, to bolster its reputation, or for any other reasons. None of the references provide statistics for the use of [REDACTED] or any other metric of its success. For the above reasons, while the Petitioner is solving problems that he has been hired to work on, he has not demonstrated his critical role for [REDACTED] or the [REDACTED].

III. CONCLUSION

The Petitioner is not eligible because he 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). Thus, we need not fully address the totality of the materials in a final merits determination. *Kazarian*, 596 F.3d at 1119-20. Nevertheless, we advise that we have reviewed the record in the aggregate, concluding that it does not support a finding that the Petitioner has established the level of expertise required for the classification sought.

ORDER: The appeal is dismissed.

Cite as *Matter of H-L-*, ID# 430656 (AAO July 13, 2017)