



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

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

MATTER OF E-G-

DATE: APR. 4, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a physics 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 Acting Director of the Nebraska Service Center denied the Form I-140, Immigrant Petition for Alien Worker, concluding that although the Petitioner satisfied three of the regulatory criteria, he did not show sustained national or international acclaim and demonstrate that he is among the small percentage at the very top of the field of endeavor.

On appeal, the Petitioner submits a brief asserting that he has sustained the required acclaim and has risen to the very top of his field.

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

I. LAW

Section 203(b)(1)(A) of the Act makes visas available to immigrants with extraordinary ability 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 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 of evidence listed at 8 C.F.R. § 204.5(h)(3)(i)-(x) (including items such as awards, memberships, and published material in certain media). The regulation at 8 C.F.R. § 204.5(h)(4) allows a petitioner to submit comparable material if he or she is able to demonstrate that the standards at 8 C.F.R. § 204.5(h)(3)(i)-(x) do not readily apply to his or her occupation.

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) (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). 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

At the time of filing, the Petitioner was working as a research physicist in the [REDACTED] at the [REDACTED] in Tennessee. As the Petitioner has not indicated or established that he has received a major, internationally recognized award, he must satisfy at least three of the ten criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x) to meet the initial evidentiary requirements.

### A. Evidentiary Criteria

The Director found that the Petitioner met the judging, original contributions, and scholarly articles criteria under 8 C.F.R. § 204.5(h)(3)(iv), (v), and (vi), respectively. His documentary evidence indicates that he has peer reviewed manuscripts for multiple journals, demonstrated original contributions of major significance in the field, and authored scholarly articles that have appeared in professional publications. For example, the record shows that the Petitioner edited articles for [REDACTED] and [REDACTED]. In addition, he has made original theoretical contributions to understanding the spin Seebeck effect (SSE) that are of major significance in the field. Lastly, he has authored articles in professional publications such as [REDACTED] and [REDACTED]. Accordingly, the record supports the Director's finding that the Petitioner has satisfied at least three of the ten regulatory criteria.

B. Final Merits Determination

As the record satisfies at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), we will 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. We evaluate whether he 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. 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 the present matter, the Petitioner has shown his eligibility for this classification.

The Petitioner received the foreign equivalent of a Ph.D. in optics and physics from the [REDACTED] (2012) and later worked as a postdoctoral researcher at the [REDACTED] in Germany. He subsequently served as a research associate at the [REDACTED] Germany, and has most recently worked as a research physicist at [REDACTED] since 2015.

With respect to his scholarly articles, the Petitioner has provided evidence of his authorship of a considerable amount of published material that appeared in distinguished professional journals. As authoring scholarly articles is inherent to scientists and researchers, the citation history or other evidence of the influence of the Petitioner's articles is an important indicator of the impact and recognition that his work has had on the field and whether such influence has been sustained. In this case, the Petitioner has offered a report from [REDACTED] reflecting hundreds of citations to his published work from 2009 to present, as well as evidence documenting that the rate at which his articles have been cited is very high for his field. The number of research articles he has coauthored and their unusually high rate of citation are commensurate with being at the very top of the field and demonstrate that his publication record sets him apart through a "career of acclaimed work in the field." See H. Rep. No. 101-723, at 59 (Sept. 19, 1990).

The influence of the Petitioner's research is further evidenced through recommendation letters that identify his original contributions in nanoscale oxide thin film fabrication and development, and explain how those advancements have significantly impacted his field. For example, [REDACTED] a professor at the [REDACTED] states that the Petitioner "found characteristic behavior" in the SSE and "for the first time revealed a direct relation between the [REDACTED] and the effect." [REDACTED] further indicates that the Petitioner's findings represent "significant contributions in physics that have considerably improved our approach to the exploration of spin Seebeck effects in oxide thin films and development of spin-caloric nano-devices for energy harvest." In addition, [REDACTED], a professor of materials science at the [REDACTED] discusses the Petitioner's research relating to the [REDACTED] and notes that his work identified "an additional handle to control the switching dynamics of ferroelectric capacitors." She concludes that his "findings are very

important for real device applications because they provide a guideline for developing ultrafast ferroelectric memory devices.”

In his letter, [REDACTED] a professor of multifunctional ferroic materials at the [REDACTED] contends that the Petitioner “has made original and significant contributions in physics, especially in the effort to advance the physical properties of oxide thin films, including the ferromagnetization and ferroelectricity.” Furthermore, [REDACTED] a physicist at [REDACTED] states that the Petitioner’s “original discoveries regarding nanostructured magnetic materials alone place him among the leading scientists in his field” and that “few others in this field have amassed such trendsetting research success.”

With regard to his participation as a judge of others’ work, the record indicates that the Petitioner has received and completed independent requests to review a substantial number of manuscripts for a large number of renowned professional publications. We find the Petitioner’s judging experience, together with the achievements described above, to be consistent with a determination that he is among the small percentage at the top of his field of endeavor. *See* 8 C.F.R. § 204.5(h)(2).

Finally, the record includes ample documentary evidence supporting the aforementioned independent references’ statements regarding the Petitioner’s standing in the field and the significance and originality of his work. In addition to the extensive number of citations to his articles, he provides documentation showing that his work is widely utilized by other research organizations. In summary, the Petitioner has demonstrated his extraordinary ability. The totality of the evidence establishes that he possesses a level of expertise that is consistent with a finding that he is one of a small percentage at the very top of the field of endeavor and that he has documented sustained acclaim. *See* section 203(b)(1)(A) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *Kazarian*, 596 F.3d at 1119-20.

### III. CONCLUSION

The Petitioner has established that he meets at least three of the evidentiary criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x). He has also demonstrated sustained national and international acclaim and that his achievements have been recognized through extensive documentation. Lastly, the Petitioner has shown that he intends to continue working in his area of expertise. He therefore qualifies for classification as an individual of extraordinary ability.

**ORDER:** The appeal is sustained.

Cite as *Matter of E-G-*, ID# 1090612 (AAO Apr. 4, 2018)