



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

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

MATTER OF L-F-R-V-

DATE: DEC. 10, 2018

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a 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 Director of the Texas Service Center denied the Form I-140, Immigrant Petition for Alien Worker, concluding that the Petitioner had shown that he only met two of the ten initial evidentiary criteria, of which he must meet at least three.

On appeal, the Petitioner contends that he meets three criteria.

Upon *de novo* review, we will dismiss 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).

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

The Petitioner is a researcher. As he has not received a major, internationally recognized award, the record must demonstrate that he satisfies at least three of the ten criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). In denying the petition, the Director found that the Petitioner met the criteria for judging under 8 C.F.R. § 204.5(h)(3)(iv) and scholarly articles under 8 C.F.R. § 204.5(h)(3)(vi) but not for awards under 8 C.F.R. § 204.5(h)(3)(i) or original contributions of major significance under 8 C.F.R. § 204.5(h)(3)(v). On appeal, the Petitioner maintains that he meets the criteria for awards and original contributions of major significance. Upon reviewing all of the evidence in the record, we find that the record does not support a finding that the Petitioner satisfies at least three criteria.

*Documentation of the alien’s receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.* 8 C.F.R. § 204.5(h)(3)(i).

The Director held that the evidence in the record did not establish that the Petitioner’s receipt of scholarships and the [REDACTED] constituted lesser nationally or internationally recognized awards for excellence in the field. The Director stated that the awards the Petitioner received appear to have been given while pursuing an education, which he noted are generally given to students or early career professionals in the field and not established professionals who have already achieved excellence in the field.

On appeal, the Petitioner states that he was awarded the 2017 [REDACTED] [REDACTED] for one of the 11 abstracts he presented at the 2017 [REDACTED] [REDACTED]. He asserts that while this award is not open to all established

professionals, it is “open to more than students and early career professionals through the inclusion of fellows.” [REDACTED] the manager of education projects and junior professionals for the [REDACTED] states in her letter that the Petitioner’s receipt of the [REDACTED] represents an award that “provides recognition for the best researchers under the minority category in science and medicine.” The record contains documentation from the [REDACTED] website which states that the purpose of the [REDACTED] program is “to increase representation of underrepresented minorities . . . in pulmonary, critical care, and sleep medicine research by providing an opportunity for these trainees in U.S. based programs to attend the [REDACTED].” Thus, it appears that the focus of this scholarship is to give additional professional opportunities to trainees in the field so they can attend this international conference. We find that the record does not provide sufficient corroborating evidence that establishes this scholarship as a nationally or internationally recognized award for excellence in the field. The Petitioner has not addressed any other awards or scholarships on appeal. Therefore, the record does not establish that he meets this criterion.

*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.* 8 C.F.R. § 204.5(h)(3)(iv).

The Director held that the Petitioner met this criterion. We agree. The Director noted that the Petitioner has conducted reviews for the *Journal of Respiratory Care*, the *European Respiratory Journal*, and *ERJ Open Research* which demonstrates that he meets the requirements of this criterion.

*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).

This regulatory criterion contains multiple evidentiary elements that the Petitioner must satisfy. He must demonstrate that his contributions are original and scientific, scholarly, artistic, athletic, or business-related in nature. The contributions must have already been realized, rather than being prospective possibilities. He must also establish that the contributions rise to the level of major significance in the field as a whole, rather than to a project or to an organization. The phrase “major significance” is not superfluous and thus has meaning. *See Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F.3d 28, 31 (3d Cir. 1995), *quoted in APWU v. Potter*, 343 F.3d 619, 626 (2d Cir. 2003). “Contributions of major significance” connotes that the petitioner’s work has significantly impacted the field. *See Visinscaia*, 4 F. Supp. 3d at 134.

The Director held that the evidence in the record does not establish the major significance of the Petitioner’s original contributions, noting that the reference letters in the record do not demonstrate that his work has already amounted to contributions of major significance. On appeal, the Petitioner asserts that the evidence in the record demonstrates that his contributions are of major significance and that they have already impacted the field. He indicates that reference letters in the record explain how the Veterans Administration is applying his contributions in treating veterans with pneumonia. He specifically claims that his findings are being incorporated into pneumonia guidelines to help reduce the overuse of antibiotics worldwide.

The record does not contain sufficient documentation to show that these guidelines have been implemented. In a letter from [REDACTED] head of the pharmacotherapy division at the [REDACTED] he indicates that he is “confident that the panel of experts writing the current pneumonia guidelines will change their recommendations based on [REDACTED] published research.” This language is prospective in nature and the record does not show that the Petitioner’s research has resulted in changes to the pneumonia guidelines.

The Petitioner claims on appeal that the letters in the record show how his work is already having an effect on how patients with pneumonia are diagnosed and treated. In a letter from [REDACTED], chief of the pulmonary section of the [REDACTED] he states that the Petitioner’s research “has opened the possibility of testing medications . . . to prevent heart scarring from happening in our Veterans who survive pneumonia, which could improve millions of lives.” Again, this is prospective in nature regarding the “possibility” of testing medications and the record has not demonstrated how the Petitioner has already impacted the field.

The Petitioner asserts that his research has been widely cited by other pneumonia researchers and that he continues to be cited regularly.<sup>1</sup> In a letter from [REDACTED], professor of pulmonary medicine at [REDACTED], he discusses the Petitioner’s research after having been an expert judge of his work at the 2016 [REDACTED] conference. [REDACTED] notes that the Petitioner was invited to present his research involving his “novel animal model (*i.e.*, *in-vivo*) of pneumococcal pneumonia.” He discusses two aspects of the Petitioner’s research regarding “(1) the host-pathogen interactions” and “(2) the systemic complications that frequently affect humans with pneumonia.” He states, “These findings provide a myriad of opportunities for researchers around the world.” He then indicates that “[t]his *in-vivo* animal model will serve to test novel treatments, vaccines and devices to improve clinical outcomes during pneumonia.” While the Petitioner’s research and his *in-vivo* model appear to be original contributions, he has not shown how these have been implemented or how they have influenced the field. “Contributions of major significance” means that the petitioner’s work has significantly impacted the field. *See Visinscaia*, 4 F. Supp. 3d at 134.

The Petitioner states that he submitted 11 abstracts that were accepted for presentation to the 16,000 researchers at the 2017 [REDACTED] international conference. The record contains a letter from [REDACTED] associate professor of medicine at [REDACTED] School of Medicine, attesting to the Petitioner’s research that he presented at this conference, noting that he “stimulated much discussion during the [REDACTED].” While presenting at this conference is a notable accomplishment, the Petitioner has not established specifically how stimulating discussion during this conference amounts to contributions of major significance. He has not shown how the abstracts he submitted have impacted the field in a significant way.

---

<sup>1</sup> The Petitioner states that additional evidence of citations to his scholarly articles will be provided with a more detailed brief. We note that more than 30 days has passed since the filing of the I-290B, Notice of Appeal or Motion, and we have not received additional supporting documentation.

The Petitioner further states that he initiated a multi-country study of pneumonia patients in hospitals in 54 countries regarding the prevalence and risk factors for methicillin-resistant staphylococcus aureus (MRSA) known as the [REDACTED] study.<sup>2</sup> He claims that this study has been “widely cited and recognized.” The record contains a report submitted with the initial filing detailing the Petitioner’s publications and citations, but the article that presents this study received only seven citations at that time. The Petitioner has not demonstrated that this level of citation is significant within his field. He has not shown that his research related to this study has impacted the field in a way that equates to contributions of major significance in the field.

The record also contains several articles that cite the [REDACTED] study. One example is an article from [REDACTED] of the Departments of Medicine, Pediatrics, and Public Health Services at the [REDACTED], entitled, [REDACTED], published at [www.thelancet.com/infection](http://www.thelancet.com/infection). In this article, [REDACTED] cites the [REDACTED] study and ultimately concludes that further research in this area is necessary. This does not demonstrate that the [REDACTED] study has significantly impacted the field. In another article discussing the [REDACTED] study, [REDACTED], professor of medicine at [REDACTED] notes that “[u]ltimately his research findings will prevent the development of antibiotic resistance, a health care problem that is now threatening our capacity to treat patients with infectious diseases.” We note that these articles predict a significant future impact based upon the Petitioner’s work, but do not describe how it has already influenced the field.

Similarly, the record also contains a letter from [REDACTED] the head of the [REDACTED] and an associate professor in respiratory medicine at the [REDACTED]. He states that due to this study, “the new recommendations of how to treat patients with community-acquired pneumonia in the United States are changing and will impact millions of lives globally.” We find that this evidence, like the articles citing the Petitioner’s work, is prospective in nature. The Petitioner has not demonstrated how his research has already led to changes in the ways antibiotics are used in the United States. He has not shown that his contributions in this regard have influenced the field in a significant manner. While we note that several of the supporting letters in the record attest to the potential the Petitioner’s contributions have in the medical field, the record does not demonstrate that these contributions are already of major significance.

[REDACTED], professor of medicine at [REDACTED] states in his letter that the Petitioner gave a presentation at the 2015 [REDACTED] meeting in [REDACTED] speaking about his “research using Mesenchymal Stem Cells to treat pneumococcal pneumonia.” He states that the Petitioner’s work “was the first experimental evidence that these cells could modulate the severity of the disease and prevent patients from dying due to pneumonia.” [REDACTED] statement tends to show that this is a finding that warrants further development rather than one that is already impacting the field. It is

---

<sup>2</sup> The record reflects that this study was conducted on behalf of the [REDACTED] for [REDACTED] investigators.

unclear what influence this finding has had on the field at large. Thus, the record does not contain sufficient documentation demonstrating that this research has had a major impact on the field equating to a contribution of major significance.

█ then adds that the Petitioner’s discovery of the concentration of “heart fatty acid binding protein (HFABP) was increased in the blood of patients with severe pneumonia who were diagnosed with adverse cardiac events.” He asserts, “This is an exciting finding as it could help early detection of patients at risk of adverse cardiac events, allowing prompt treatment.” Here, the record does not demonstrate that this has been implemented in the field. Rather, this conclusion appears to be prospective in nature, noting that it “could help early detection.” The evidence in the record does not demonstrate that this finding is currently helping early detection. Accordingly, the Petitioner has not established that he meets the requirements 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. 8 C.F.R. § 204.5(h)(3)(vi).*

The Director held that the Petitioner met this criterion an account of his articles published in the *American Journal of Respiratory and Critical Care, Infection and Immunity, and Respiratory Care*. We agree that the Petitioner meets this criterion.

### III. CONCLUSION

The Petitioner is not eligible because he has not submitted the required initial evidence of either a qualifying 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 do not need to 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 acclaim and recognition required for the classification sought.

**ORDER:** The appeal is dismissed.

Cite as *Matter of L-F-R-V-*, ID# 1772208 (AAO Dec. 10, 2018)