



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

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

MATTER OF S-

DATE: FEB. 28, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a postdoctoral research associate in the field of neuroscience, 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 although the Petitioner satisfied the initial regulatory criteria, of which he must meet at least three, he did not show sustained national or international acclaim nor demonstrate that he is among the small percentage at the very top of the field of endeavor.

On appeal, the Petitioner submits an additional document and a brief, arguing that the Director's findings were erroneous.

Upon *de novo* review, we will sustain 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 research associate employed by [REDACTED]. As he has not established that he has received a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x).

A. Evidentiary Criteria

In denying the petition, the Director found that although the Petitioner met the judging criterion at 8 C.F.R. § 204.5(h)(3)(iv), the contributions of major significance criterion at 8 C.F.R. § 204.5(h)(3)(v), and the authorship of scholarly articles criterion at 8 C.F.R. § 204.5(h)(3)(vi), he did not demonstrate, by a preponderance of the evidence, that he has sustained national or international acclaim and is one of the small percentage at the very top of the field of endeavor. We concur that the evidence in the record indicates that he has reviewed manuscripts for several journals, authored articles that have appeared in professional publications, and made original contributions of major significance. Accordingly, we will evaluate the totality of his documentary evidence in the context of the final merits determination below.

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).

B. Final Merits Determination

As the Petitioner has submitted the requisite initial evidence, we will evaluate whether the Petitioner has demonstrated, by a preponderance of the evidence, that he has sustained national or international acclaim and is one of the small percentage at the very top of the field of endeavor, and that his achievements have been recognized in the field through extensive documentation. In a final merits determination, we analyze a 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. *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 this matter, the Petitioner has shown his eligibility for the classification.

The record indicates that the Petitioner received his Ph.D. degree in neuroscience from the [REDACTED] in 2011 and is employed as a research associate at [REDACTED]. He focuses on investigating how the brain represents abstract information and how consciousness affects such representation. As mentioned above, the Petitioner has reviewed manuscripts, authored scholarly articles, and made original contributions of major significance in the field of neuroscience.

Regarding the Beneficiary's service as a peer reviewer, an evaluation of the significance of his judging experience is appropriate to determine if such evidence is indicative of the extraordinary ability required for this highly restrictive classification. *See Kazarian*, 596 F. 3d at 1121-22. Participation in the peer review process does not automatically demonstrate that an individual has sustained national or international acclaim at the very top of his field. Here, however, the record indicates that the Petitioner has received and completed independent requests to review a substantial number of manuscripts for numerous professional publications including the [REDACTED] and [REDACTED]. The record thus indicates that he is among that small percentage who have risen to the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2).

With regard to the Petitioner's authorship of scholarly articles, he presented evidence of his considerable amount of published material that appeared in professional journals, including numerous articles in the [REDACTED] an official journal of the [REDACTED]. In addition, the record includes abstracts and proceedings from his presentations at professional conferences. As authoring scholarly articles is often inherent to the work of scientists and researchers, the citation history or other evidence of the influence of his articles is an important indicator to determine the impact and recognition that his work has had on the field and whether such influence has been sustained. *See Kazarian*, 596 F. 3d at 1122. For example, numerous independent citations to an article authored by the Petitioner would support a finding that other researches have recognized and been influenced by her work. On the other hand, few or no citations to an article authored by the Petitioner may indicate that his work has gone largely unnoticed by his field.

In the case here, the Petitioner has offered evidence that his published material is frequently and consistently cited, and presents evidence on appeal to demonstrate that his work continues to be cited at a level commensurate with sustained national or international acclaim at the top of his field. As such, he has established that his publication record, as well as his presentations, sets him apart through a “career of acclaimed work in the field.” *See* H. Rep. No. 101-723, at 59 (Sept. 19, 1990).

Further, he submitted evidence demonstrating that he co-authored a chapter for the reference book entitled [REDACTED] and noted that his chapter covers the entire history of research into the question of how context influences the neural responses in visual processing regions of the brain. The Petitioner further claims that this book is “highly prestigious” and that “a small group of top researchers” were selected to write the chapters in their niche field. A letter from [REDACTED] Professor of Ophthalmology and Visual Science at the [REDACTED] his co-author on this chapter, corroborates these statements, noting that she chose the Petitioner to be her co-author based on the outstanding research he performed under her while previously working in her laboratory.

The record further demonstrates that the Petitioner presented his work in the field at the 2016 [REDACTED] [REDACTED] as well as the [REDACTED] meeting that same year. He submitted a letter from [REDACTED] Professor of Neuroscience at [REDACTED] and Investigator of the [REDACTED] who stated that the Petitioner currently works in his laboratory on two major projects, and they presented his results together at the aforementioned conferences. [REDACTED] stated that the Petitioner’s results “were well received” at these conferences, noting that [REDACTED] garners approximately 30,000 attendees. He further states that the Petitioner’s “research on unraveling the physiology and pathology of higher brain function extends beyond his present projects and therefore is of national concern,” noting that his research “will continue to facilitate the development of a new diagnostic and treatment options for patients with a variety of disorders that affect cognitive function.”

The Petitioner claims that his work in understanding how visual information is processed by the brain is groundbreaking, and the influence of his work is evidenced through recommendation letters from colleagues and peers in the field who have both collaborated with him on various research projects or relied upon his findings as the basis for their own experiments. The Petitioner submitted numerous letters of recommendation from colleagues and researchers in support of the assertion. For example, [REDACTED] Head of the Department of Optometry and Vision Sciences at the [REDACTED] states that her laboratory has relied on the Petitioner’s publications to “inform the design of . . . visual stimuli, to benchmark behavioral performance, and for valuable insights into the theoretical modeling of the results.” [REDACTED] Associate Professor of Neurology and Neurosurgery at [REDACTED] states that the Petitioner’s work is “particularly helpful in clarifying the relationship between neural activity and perception.” [REDACTED] Ph.D., of [REDACTED] states that the Petitioner’s “current work and contributions have significantly advanced our fundamental understanding of how the brain converts evidence from the senses into a decision to act.” Moreover, numerous other individuals attest to the Petitioner’s innovative contributions to the field.

Associate Professor of Electrical and Electronic Engineering at [REDACTED] states that the Petitioner is “currently pioneering a novel decision making paradigm for single-cell neurophysiology in awake behaving non-human primates which will be game-changing to the field. . . .” [REDACTED] Associate Professor of Physiology and Biophysics at the [REDACTED] states that the Petitioner is doing pioneering research in collaboration with his group on the [REDACTED] project, noting that if the Petitioner’s approach can be successfully implemented, “it will open up new therapeutic avenues. . . .” [REDACTED] Professor of Neurobiology at [REDACTED] states that the Petitioner has developed an “extensive and outstanding research portfolio.” These numerous attestations of both the current and potential impact of the Petitioner’s work demonstrate that the Petitioner’s work is already influencing the field.

The authors indicate that the importance of the Beneficiary’s work has been demonstrated through its publication in scientific journals that have been discussed and analyzed above, and that these articles are influencing and inspiring the work performed in their own laboratories. The fact that these fellow researchers state that the Petitioner’s published works may be helpful or instructional in performing their own research demonstrates that his work has been widely implemented in the field, and therefore establishes that he has achieved sustained national or international acclaim and that he is one of that small percentage who have risen to the very top of the field.

In short, 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 who have risen to the very top of the field of endeavor. In addition, 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 shown 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. He therefore qualifies for classification as an individual of extraordinary ability.

ORDER: The appeal is sustained.

Cite as *Matter of S-*, ID# 898239 (AAO Feb. 28, 2018)