U.S. Citizenship and Immigration Services

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

MATTER OF Y-L-

DATE: JAN. 19, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, an engineer, 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 Form I-140, Immigrant Petition for Alien Worker, concluding that the Petitioner had satisfied two of the initial evidentiary criteria, of which he must meet at least three.

On appeal, the Petitioner submits a brief, stating that he satisfies at least 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 qualified 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). If that petitioner does not submit this evidence, then 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) (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 an engineer employed at the [redacted] where he is conducting research on developing control algorithms for next generation power system. Because 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). In denying the petition, the Director found that the Petitioner met only two criteria: judging under 8 C.F.R. § 204.5(h)(3)(iv) and scholarly articles under 8 C.F.R. § 204.5(h)(3)(vi).

On appeal, the Petitioner maintains that he also meets original contributions criterion under 8 C.F.R. § 204.5(h)(3)(v). We have reviewed all of the evidence in the record, and conclude it does not support a finding that the Petitioner satisfies the plain language requirements of at least three criteria.

> *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 found that the Petitioner participated as a judge of the work of others. The record indicates that the Petitioner served as a reviewer of manuscripts for professional publications, such as the [redacted] Accordingly, we agree with the Director's determination, and the Petitioner demonstrated that he meets 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).

The Petitioner contends that his scholarly articles published in top journals, his high citations to his articles, and recommendation letters demonstrate his eligibility for this criterion. In order to satisfy the regulation at 8 C.F.R.§ 204.5(h)(3)(v), a petitioner must establish that not only has he made original contributions but that they have been of major significance in the field. For example, a petitioner may show that the contributions have been widely implemented throughout the field, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance.

Regarding his scholarly articles, the Petitioner claims that the publication of his research in leading journals is evidence of its significance, but the record does not sufficiently demonstrate that his written work has been considered of major significance in the field. The Petitioner states that his published articles are in top ranked journals that are extremely selective with a rigorous peer review process, making publication in them a rare accomplishment achieved by only the very best researchers in the field. For example, the Petitioner explains that he published in two journals that have acceptance rates between 10% and 15%. The regulations contain a separate criterion concerning the authorship of scholarly articles in professional publications. 8 C.F.R. § 204.5(h)(3)(vi). In *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009), the court held that publications and presentations are not sufficient evidence under 8 C.F.R. § 204.5(h)(3)(v) absent evidence that they were of "major significance" in the field. In 2010, the *Kazarian* court reaffirmed its holding that we did not abuse our discretion in finding that the petitioner had not demonstrated contributions of major significance. 596 F.3d at 1122. There is no presumption that every published article in a competitive journal is a contribution of major significance in the field; rather, a petitioner must document the actual impact of his articles. Here, although the information provided indicates the acceptance rates of articles for these journals, such evidence does not show how his articles are considered by the field to be of major significance.

As further evidence under this criterion, the Petitioner offered documentation indicating that his written work has been cited approximately 346 times, including his two articles having 72 citations each and a third article having 53 citations. Commonly, citations can serve as an indication that the field has taken interest in a petitioner's work. Although the Petitioner submitted samples of articles that cited to his work, they do not feature his articles or extensively discuss them to signal a contribution of major significance in the field. The Petitioner also contends that his articles have been cited at a much higher rate than those of other engineers. For example, the record reflects the article ' published in the garnered 72 citations, and was one of the top one percent most cited articles in the field for the year it was published. Even though the Petitioner provides evidence that his articles were among the top cited articles by field within the year they were published, he has not sufficiently identified the specific contributions he has made through this written work or explained their significance to the field.

On appeal, the Petitioner notes that the recommendation letters "contained detailed discussion of his contributions and specifically discussed corroborating documentary evidence and why it showed that his work was majorly significant." Upon review of the letters, several of them highlight that the Petitioner was asked to present his research findings at conferences and was invited to do the peer review for prestigious journals.[1] For example, the letter from [redacted] assistant professor at the [redacted] stated that "including [the Petitioner] among their reviewing staff [of the journal] is a strong endorsement of his status as a leading researcher in mechanical engineering and particularly in power system operations." The letter from [redacted] associate professor at the [redacted] also asserts that since the Petitioner "reviews articles for so many journals and conferences [it] shows that his pioneering contributions to the areas of energy systems research have placed him at the forefront of the field of mechanical engineering." However, the authors do not explain how the Petitioner's conferences or peer reviews have impacted or influenced the field to establish original contributions of major significance. Participation in a conference demonstrates that his findings were shared with others, but being chosen to present in-and-of-itself does not indicate the major significance of his contribution. Publications and presentations are not sufficient under 8 C.F.R. § 204.5(h)(3)(v) absent evidence that they were of "major significance." *Kazarian*, 580 F.3d at 1036, *aff'd in part* 596 F.3d at 1115. In 2010, the *Kazarian* court reaffirmed its holding that we did not abuse our discretion in our adverse finding relating to this criterion. 596 F.3d at 1122. Here, the Petitioner has not shown that his presentations or peer review rise to a level of original contributions of major significance in the field.

Further, several letters mention the Petitioner's citation history without specifying how his written work is considered an original contribution of major significance in the field. For example, [redacted] stated that "these papers have been cited dozens of times, which clearly demonstrates that other researchers from throughout the field of mechanical engineering and its dependent fields have relied on his findings and that he has impacted the research community as a whole." In addition, [redacted] assistant professor at [redacted] indicated that "[g]iven the high number of citations to his work, it is clear that [the Petitioner's] international peers are frequently engaging in this dialogue, testing his results, and incorporating his findings into their own projects." Although both letters further discuss the Petitioner's original research, the authors have not sufficiently explained the contributions that were made through his cited works, or established that the citations are reflective of a contribution "of major significance in the field."

In addition, the recommendation letters explain that the Petitioner's research is in the application of automation technologies to the improvement of energy efficiency and renewable energy technologies, and they discuss his projects and new models. Several of the recommendation letters indicate that the Petitioner's research will help with the environment. For example, the letter from [redacted] stated that "his work is also important in efforts to reduce the negative impact that the power grid has on the environment." The letter from [redacted] noted that the "United States government has made the integration of renewable energy sources a major goal," and "[g]iven the urgent need for energy solutions that do not contribute to global warming, the value of

[1] While we discuss only a sampling of these letters, we have reviewed and considered each letter present in the record.

[the Petitioner's] research to the United States is plain." Furthermore, the letter from stated that "with respect to the wealth of benefits which the United States will enjoy as a result of an improved power system, it is certainly in the nation's best interest to allow [the Petitioner's] uninterrupted investigations of power systems control algorithms." The assertion that the Petitioner may prospectively help the environment does not show that the Petitioner's work has already had this effect. The expectation of a few regarding the possible future impact of the Petitioner's work is not evidence that his work is considered by the greater field to be of major significance.

Similarly, several of the letters discuss how the Petitioner's finding "will" shape the course of renewable energy solutions that have not yet been implemented. For example, the letter from stated that his "findings continue to shape important efforts to develop novel models and simulations for improving the efficiency of power systems and reducing their emissions." In addition, the letter from senior scientific engineering associate at indicated that he utilized the Petitioner's research in his own research and "I was able to successfully demonstrate that these methods could be deployed to ensure the efficient use of renewable energy." also discussed how another research group used the Petitioner's research results and "this group successfully devise a new algorithm that can be used in HVAC systems to ensure smooth and stable power operation when utilizing solar power sources." These statements, however, are prospective and do not show that the Petitioner's work has already had this effect. Again, statements regarding the anticipated impact of the Petitioner's work are not evidence that he has made contributions of major significance.

Further, the Petitioner submitted letters from other researchers who have cited to the Petitioner's articles in their own written work. For instance, stated that he "found his studies useful to my own research in power systems and cited his paper." professor at the also stated that her "work was deeply informed by [the Petitioner's] previous methods, and I used his work as a guide for the types of features I would need to implement in my own multi-building model." Although the authors indicate that the Petitioner's research has helped their own work, they did not show or describe how the research has widely impacted the field, so as to demonstrate original contributions of major significance. *See Visinscaia*, 4 F. Supp. 3d at 134-35 (upholding a finding that a ballroom dancer had not met this criterion because she did not corroborate her impact in the field as a whole).

The letters considered above do not provide specific examples of how the Petitioner's contributions rise to a level consistent with major significance. Letters that repeat the regulatory language but do not explain how an individual's contributions have already influenced the field are insufficient to establish original contributions of major significance in the field. *Kazarian*, 580 F.3d at 1036, *aff'd in part* 596 F.3d at 1115. In 2010, the *Kazarian* court reiterated that the USCIS' conclusion that the "letters from physics professors attesting to [the petitioner's] contributions in the field" were insufficient was "consistent with the relevant regulatory language." 596 F.3d at 1122. Moreover, USCIS need not accept primarily conclusory statements. *1756, Inc. v. The U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.C. Dist. 1990).

The phrase "contributions of major significance" connotes that the Petitioner's work has significantly impacted the field. *See* 8 C.F.R. § 204.5(h)(3)(v); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 135-136 (D.D.C. Dec. 16, 2013). As discussed above, the Petitioner has not sufficiently shown that his work, once published or presented, has risen to the level of contributions of major significance in the field. Accordingly, the Petitioner did not establish that he satisfies 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).*

As discussed above, the Petitioner authored articles that were published in conferences and professional journals, such as and Therefore, the Director found that the Petitioner satisfied this criterion, and we agree with that determination.

## III. CONCLUSION

The Petitioner has not submitted the required initial evidence of either a one-time achievement or documents that meet at least three of the ten criteria. As a result, we need not provide the type of final merits determination referenced in *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.

The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward the top. USCIS has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r. 1994). In the case here, the record shows the Petitioner has served as a peer reviewer, and that he published multiple frequently cited articles between 2012 and 2016. Regarding his judging experience, the Petitioner has not shown that his manuscript and paper reviews are indicative of the required sustained national or international acclaim. *See* section 203(b)(1)(A) of the Act. Without evidence that sets him apart from others in his field, such as evidence that he has a consistent history of completing a substantial number of review requests relative to others, served in an editorial position for a distinguished journal or publication, or chaired a technical committee for a reputable conference, the Petitioner has not established his peer review requests are reflective of being among that small percentage at the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2). Further, the Petitioner has not sufficiently demonstrated that his authorship and citation history is consistent with being among the small percentage at the top of his field or having a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990). While the Petitioner and his references emphasize the statistics regarding his citations and the prestige of the journals and conferences with which he has been involved, the overall record does not sufficiently illustrate or explain the Petitioner's work and its significance to the field. In sum, considering the full measure of the Petitioner's ability and achievements, the record does not show his work has

been recognized at a level indicative of a record of sustained acclaim or that he is among that small percentage at the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act.

For the foregoing reasons, the Petitioner has not shown that he qualifies for classification as an individual of extraordinary ability.

**ORDER:** The appeal is dismissed.

Cite as *Matter of Y-L-*, ID# 786137 (AAO Jan. 19, 2018)