



U.S. Citizenship
and Immigration
Services

Non-Precedent Decision of the
Administrative Appeals Office

MATTER OF G-A-O-

DATE: May 3, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, an astrophysicist, seeks classification as an alien of extraordinary ability. *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 a one-time achievement or met at least three of the evidentiary criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

On appeal, the Petitioner submits additional evidence and asserts that the Petitioner meets three of the evidentiary criteria, and that she has sustained national or international acclaim and is one of that small percentage of individuals at the very top of her field of endeavor.

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 a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the recognition of his or her achievements in the field through 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 sufficient qualifying 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).

Satisfaction of at least three criteria, however, does not, in and of itself, establish eligibility for this classification. *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), *aff'd*, 683 F.3d 1030 (9th Cir. 2012); *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (holding that the “truth is to be determined not by the quantity of evidence alone but by its quality” and that U.S. Citizenship and Immigration Services (USCIS) examines “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”). Accordingly, where a petitioner submits qualifying evidence under at least three criteria, we will determine whether the totality of 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.

II. ANALYSIS

The Petitioner is a post-doctoral researcher in the field of astrophysics. Because she has not established that she has received a major, internationally recognized award, she 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 two of the criteria, service as a judge of the work of others in her field under 8 C.F.R. § 204.5(h)(3)(iv), and authorship of scholarly articles in her field under 8 C.F.R. § 204.5(h)(3)(vi).

On appeal, the Petitioner asserts that in addition to those two criteria, she has also made original scientific contributions of major significance in her field, satisfying the requirements of 8 C.F.R. § 204.5(h)(3)(v). We have reviewed all of the evidence in the record, and find that it establishes that the Petitioner satisfies the plain language requirements of at least three criteria.

A. Evidentiary 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 specialization for which classification is sought. 8 C.F.R. § 204.5(h)(3)(iv)

The Director found that the Petitioner satisfied the requirements of this criterion. The record indicated that the Petitioner has served as a reviewer for a workshop and three different scientific

journals on eight occasions. Accordingly, we agree with the Director's determination that the Petitioner meets the plain language of this criterion.

Evidence of the aliens' 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 did not provide a detailed analysis of the evidence submitted for this criterion. The Petitioner bases her claim to eligibility on a software package called [REDACTED] used for modelling data from X-ray satellites, and her study of radio relics from galaxy clusters. The record includes four letters of support from researchers in the Petitioner's field, including one from [REDACTED] her adviser at the [REDACTED] and three others described as "independent advisory opinions."

Regarding the [REDACTED] software, the record also includes emails from two researchers who are not the Petitioner's collaborators, seeking guidance in the use of the software. On appeal, the Petitioner cites this evidence as establishing the adoption of her work by others in the field. However, this evidence shows only limited use of the [REDACTED] software by other researchers, and thus does not establish that its development constitutes a major contribution to the field of astrophysics.

Additionally, the Petitioner contends that her work using several instruments to study large-scale shocks created by the collision of galaxy clusters amounts to an original contribution of major significance. [REDACTED] indicates that the Petitioner's research challenged the traditional view in the field regarding the formation of resulting radio relics. She also references a 2017 paper which cites to the work published by the Petitioner as a result of this study. [REDACTED] of the [REDACTED] also points out two articles which relied upon the data results of the Petitioner's X-ray observations. [REDACTED] of the [REDACTED] also states that the Petitioner's studies on radio relics challenged the accepted theory regarding their formation, but indicates that the Petitioner's results were not sufficiently conclusive to reject the existing diffusive shock acceleration explanation. He also states that he "cited [REDACTED] repeatedly" in his own scientific publication on radio relic formation in galaxy clusters. Finally, [REDACTED] references a different published article which used the Petitioner's data and findings, and states that the petitioner's work "has advanced the understanding of galaxy clusters through her research."

While these letters indicate that the Petitioner's work on radio relic formation received attention in the field, they do not establish that this work, which the Petitioner indicates was disseminated in six published journal articles, made an impact commensurate with a contribution of major significance in the field. Notably, [REDACTED] stated that the alternative explanation for radio relic formation advanced by the Petitioner has not displaced the traditional explanation. Although [REDACTED] indicates that the Petitioner has advanced the collective understanding on this topic, the record does not establish that her contributions have been of major significance.

Furthermore, the Petitioner contends that the Director did not give proper evidentiary weight to the citations to her published work. She asserts that the total number of citations of her research does not accurately gauge her contributions to her field, and submits an article published in the journal *Scientometrics* which proposes analyses to measure the productivity of a scientist as well as the impact of his or her work. We agree with the Petitioner that a focus solely on the total number of citations does not provide the most accurate picture of a researcher's impact on his or her field, and note that the portion of the Director's decision discussing citation counts was in response to data submitted by the Petitioner. Citation rates provide evidence of discussion of the Petitioner's work in the field, but do not, by themselves, provide sufficient context to determine the nature of that discussion or the adoption of her idea regarding radio relics. The letters written on the Petitioner's behalf provide additional context, but do not demonstrate the significance of the impact of her work on the field.

The Petitioner also asserts that the Director did not give sufficient consideration to the ranking of the publications in which her work has been published, and submits what is described as a faculty handbook from the [REDACTED] University. This document, undated and lacking verification of its source, supports the premise that impact factors and other means of ranking scholarly journals should be used to measure researcher productivity in an academic setting. The Petitioner has not established that productivity equates to making a contribution of major significance. We do not presume that work published in a highly ranked publication will necessarily lead to a significant contribution. Rather, we consider the totality of the evidence presented to determine if a petitioner's work has had a significant impact on his or her field.

Taken together, the evidence of the citations to the Petitioner's published findings and the reference letters from her fellow astrophysicists establishes that the Petitioner has been productive, and that her published data and findings have been relied upon by others in their own research. It does not demonstrate that the Petitioner has made a contribution of major significance in the field of astrophysics. Therefore, she has not met 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 found that the Petitioner met this criterion. The record establishes that the Petitioner has published more than 20 articles in peer-reviewed, scientific journals. Therefore, we agree with the Director's determination.

III. CONCLUSION

The Petitioner is not eligible because she 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

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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 G-A-O-*, ID# 1165232 (AAO May 3, 2018)