



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

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

MATTER OF R-D-

DATE: NOV. 27, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a structural biologist, 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 only two of the ten initial evidentiary criteria, of which he must meet at least three.

On appeal, the Petitioner submits additional documentation and a brief, arguing that he meets at least three of the 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). 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 a structural biologist who is working as a senior research associate at [REDACTED] in [REDACTED] New York. As the Petitioner 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

The Director found that the Petitioner met the following 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). The record reflects that we determined in a prior proceeding that he fulfilled the original contributions criterion under 8 C.F.R. § 204.5(h)(3)(v).¹ Accordingly, the Petitioner has established that he satisfies at least three regulatory criteria, and we will evaluate the totality of the evidence in the context of the final merits determination below.

¹ *See Matter of R-D-*, ID# 12414 (AAO Sept. 30, 2015). This non-precedent decision involved an earlier Form I-140 filed by the Petitioner seeking the same classification (an individual of extraordinary ability) based on his work as a structural biologist.

B. Final Merits Determination

As the Petitioner has submitted the requisite initial evidence, we will evaluate whether he has demonstrated, by a preponderance of the evidence, his sustained national or international acclaim and that he 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, we determine that the Petitioner has not shown his eligibility.

The record reflects that the Petitioner received his doctor of philosophy in physics from the [REDACTED] in India in 2002. In addition, the Petitioner indicated that he conducted a postdoctoral fellowship at [REDACTED] in Sweden from 2003 to 2005 and was a research associate at the [REDACTED] from 2006 to 2010. According to his Form G-325A, Biographic Information, he has worked as a "research scientist" for the [REDACTED] from 2011 to 2015 and for [REDACTED] from 2015 to the present.² As mentioned above, the Petitioner judged others within his field, authored scholarly articles, and made contributions through his research. The record, however, does not demonstrate that his achievements are reflective of a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990).

Regarding his judging service, an evaluation of the significance of his 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. The record reflects that the Petitioner completed manuscript reviews for three professional publications. Specifically, the Petitioner provided evidence showing that he performed 1 review³ for *BMC Bioinformatics*, 1 review for the *Australian Journal of Chemistry*, and 17 reviews for the *Journal of Biomolecular Structure and Dynamics*. The Petitioner, however, did not establish that his 19 manuscript reviews are reflective of a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. at 59. We note that his evidence indicates, with the exception of one review in 2014 and one in 2016, the remaining manuscript reviews occurred in 2011. Here, the Petitioner did not demonstrate that such judging experience is indicative of the required sustained national or international acclaim. See section 203(b)(1)(A) of the Act.

In addition, the Petitioner presented evidence showing that *BMC Bioinformatics* is ranked 31 out of 396 professional journals in biochemistry and the *Journal of Biomolecular Structure and Dynamics* is ranked 181 out of 289 professional journals in biochemistry and molecular biology and 38 out of

² The record contains a letter from the Petitioner indicating that he is employed as a "Senior Research Associate" at [REDACTED]

³ The Petitioner submitted two emails from September 2011 requesting him to review two other manuscripts; however, he did not demonstrate that he actually completed them.

72 professional journals in biophysics. The Petitioner, however, did not establish that he performed manuscript reviews for highly ranked, prestigious journals in his field. Moreover, although *BMC Bioinformatics* is ranked within the top 10%, he only conducted one review in 2011, which neither places him among the small percentage at the very top of his field nor demonstrates sustained national or international acclaim. See 8 C.F.R. § 204.5(h)(2) and section 203(b)(1)(A) of the Act.

Furthermore, 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. 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 editorial positions for distinguished journals or publications, or chaired technical committees for reputable conferences, the Petitioner has not established that his peer review experience places him among that small percentage at the very top of the field of endeavor. See 8 C.F.R. § 204.5(h)(2).

Likewise, mere publication of a petitioner's scientific research does not automatically place one at the top of the field. Here, the Petitioner presented evidence showing that he authored 29 papers in professional journals from 1998 to 2015.⁴ The Petitioner, however, has not demonstrated that this publication record is consistent with being among the small percentage at the top of the field or having a "career of acclaimed work." H.R. Rep. No. at 59. In addition, the commentary for the proposed regulations implementing section 203(b)(1)(A)(i) of the Act provide that the "intent of Congress that a very high standard be set for aliens of extraordinary ability is reflected in this regulation by requiring the petitioner to present more extensive documentation than that required" for lesser classifications. 56 Fed. Reg. 30703, 30704 (July 5, 1991). He has not shown that his authorship of 29 published articles is reflective of being among the small percentage at the very top of his field. See 8 C.F.R. § 204.5(h)(2).

Similarly, the Petitioner presented evidence showing that four of his articles were published in four journals with rankings in the top ten in their respective fields, such as *Structure*, *Inorganic Chemistry*, *Journal of the Royal Society Interface*, and *Cell Reports*. That a publication bears a high ranking or impact factor is reflective of the publication's overall citation rate. It does not, however, demonstrate the influence of any particular author within the field or how an author's research has had an impact within the field. Here, the Petitioner did not establish that publishing four articles in highly rank journals is indicative of being among the small percentage at the very top of his field or a career of acclaimed work. See 8 C.F.R. § 204.5(h)(2) and H.R. Rep. No. at 59.

⁴ On appeal, the Petitioner provides screenshots from Google Scholar indicating his authorship of the paper, [REDACTED]; however the screenshots do not indicate which journal published the article and when it occurred. Moreover, the Petitioner handwrote that he authored another article for publication in 2018. The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1).

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 can be an indicator to determine the impact and recognition that his work has had on the field and whether such influence has been sustained. For example, numerous independent citations for an article authored by the Petitioner may provide solid evidence that his work has been recognized and that other researchers have been influenced by his work. Such an analysis at the final merits determination stage is appropriate pursuant to *Kazarian*, 596 F. 3d at 1122. On appeal, the Petitioner offers evidence that his articles have been cited 612 times, with his highest four articles cited approximately 89, 76, 73, and 53 times, respectively. While the Petitioner's citations, both individually and collectively, show that field has noticed his work, he did not establish that such rates of citation are sufficient to demonstrate a level of interest in his field commensurate with sustained national or international acclaim. See section 203(b)(1)(A) of the Act. Moreover, the Petitioner did not show that the citations to his research garnered attention at a level consistent with that small percentage at the very top of his field. See 8 C.F.R. § 204.5(h)(2). The Petitioner, for instance, did not compare his citations to others in his field of endeavor that are recognized as already being among the top in his field.

In addition, the Petitioner offered evidence of requests to participate and speak at approximately 15 conferences. One invitation occurred in 2015, and the remaining occurred after the filing of the petition. Moreover, the Petitioner did not demonstrate that he participated or spoke at any of the conferences. Regardless, the Petitioner did not establish that the number of his conference invitations are significant or show the required sustained national or international acclaim for this highly restrictive classification. See section 203(b)(1)(A) of the Act.

The record also contains recommendation letters that summarize the Petitioner's personal achievements, such as authoring articles, invitations to speak at conferences, and citations of his work by others, but do not specifically explain why he is considered among that small percentage at the very top of his field of endeavor or how he has garnered sustained national or international acclaim. Instead, the authors make general assertions repeating language from the statute and regulations. For instance, [REDACTED] senior research scientist at [REDACTED] claimed that the Petitioner's "significant achievements have placed him to the top small percentage in the field." In addition, [REDACTED] co-worker at [REDACTED] stated that the Petitioner "has achieved national and international recognition and he truly belongs to the top small percentage in the field." Moreover, [REDACTED] CEO for [REDACTED], indicated that the Petitioner "without any doubt fully qualifies as an extraordinary researcher in the field of endeavor who has earned international recognition in the field and proven as belonging in the small group who has risen to the top in his field of research." Repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). Here, the letters do not show that the Petitioner is largely viewed by the overall field as being among that small percentage at the very top of the field of endeavor. See 8 C.F.R. § 204.5(h)(2). The Petitioner did not establish that he has received widespread recognition for his achievements and is seen by the greater field as having a career of acclaimed work. See H.R. Rep. No. at 59.

The record as a whole, including the evidence discussed above, does not establish the Petitioner's eligibility for the benefit sought. The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields. USCIS has long held that even athletes performing at the major league level do not automatically meet the statutory standards for classification as an individual of "extraordinary ability." *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994). While the Petitioner need not establish that there is no one more accomplished to qualify for the classification sought, we find the record insufficient to demonstrate that he has sustained national or international acclaim and is among the small percentage at the top of his field. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2).

III. CONCLUSION

For the reasons discussed above, the Petitioner has not established his eligibility as an individual of extraordinary ability.

ORDER: The appeal is dismissed.

Cite as *Matter of R-D-*, ID# 1757889 (AAO Nov. 27, 2018)