



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

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

MATTER OF G-X-

DATE: SEPT. 18, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a postdoctoral researcher in viral immunology, seeks classification of the Beneficiary 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 Beneficiary met the required three of the ten initial evidentiary criteria but that he did not qualify for extraordinary ability classification in the final merits analysis.

On appeal, the Petitioner submits additional evidence and contends that the Beneficiary qualifies for this classification.

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 postdoctoral researcher. As she has not received a major, internationally recognized award, the record must demonstrate that she 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 two criteria: participation as a judge of the work of others under 8 C.F.R. § 204.5(h)(3)(iv) and authorship of scholarly articles under 8 C.F.R. § 204.5(h)(3)(vi). On appeal, the Petitioner maintains that she also meets the criterion requiring original contributions of major significance under 8 C.F.R. § 204.5(h)(3)(v). Upon reviewing all of the evidence in the record, we concur with the Director that the Petitioner has met the judging and scholarly articles criteria but not the original contributions criterion. Therefore, the record does not support a finding that the Petitioner satisfies 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 record reflects that the Petitioner reviewed manuscripts for [REDACTED] and [REDACTED] [REDACTED] which consists of judging the work of others in the field. Therefore, the Petitioner has established that she 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).

This regulatory criterion contains multiple evidentiary elements that the Petitioner must satisfy. The contributions must have already been realized, rather than being prospective possibilities. They must be original and scientific, scholarly, artistic, athletic, or business-related in nature. Finally, the contributions must 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). The term “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 Petitioner did not meet this criterion, concluding that her citation history, when compared with that of the very top scientists in the field, does not establish that her contributions are of major significance in the field. The Petitioner challenges this conclusion and states that her research publications have been cited 641 times as of September 2017, adding that this is an accomplishment that most scholars at the same career stage have not achieved. She states that the Director’s decision precludes young scientists who are early in their career from meeting this criterion. The Petitioner also compares her most cited works since 2006 with those of three professors who have written letters in support of this petition, which we will discuss further below, noting that the Petitioner’s citation levels exceed those of the professors.

First, we note that the age of a petitioner is not relevant to whether he or she meets the statutory and regulatory requirements for extraordinary ability classification. Second, the Director’s comparison of the Petitioner’s citations to that of other scientists or researchers in her field is generally not appropriate in determining whether she has made original contributions of major significance in the field. Instead, the Director’s evaluation of the Petitioner’s citations to others in her field is more relevant in a final merits determination demonstrating her sustained national or international acclaim, that she is one of the small percentage at the very top of the field of endeavor, and that her achievements have been recognized in the field through extensive documentation. *See* 8 C.F.R. § 204.5(h)(2)-(3). The focus here is whether the Petitioner meets this criterion of original contributions of major significance.

The record contains several letters that highlight the Petitioner’s contributions related to liver cancer research and to the West Nile Virus.¹ With respect to her liver cancer research, the record contains a letter from [REDACTED], professor of medicine and director of the [REDACTED] stating that the Petitioner’s “work represents one of the most important research articles in clarifying the role of the hedgehog pathway in liver cancer, the 4th death-causing cancer of the world.” She states that “Hepatocellular carcinoma (HCC) is the major form of liver cancer” and that “it is critical to understand the molecular basis of HCC and develop proper cancer treatments.” [REDACTED]

¹ While we do not discuss every letter submitted, all were reviewed and considered in reaching our decision.

indicates that the Petitioner and her former colleagues in China “found that hedgehog signaling activation occurs frequently in HCC” and that specific inhibition of hedgehog signaling in HCC cells “decreased the expression of hedgehog target genes, inhibited cancer cell growth and resulted in apoptosis.” The record also contains a letter from [REDACTED] a professor in the Department of Hepatobiliary Surgery at [REDACTED] in China, who states that the Petitioner found that “cyclopamine tartrate salt (CycT) . . . was effective in inhibiting the pathway and shrinking tumors derived from basal cell carcinomas . . . the first report that CycT is an effective inhibitor of hedgehog-signaling-mediated carcinogenesis.”

While the Petitioner’s research appears to be an original contribution, the record does not demonstrate its significance to the field. The authors of the letters refer to the Petitioner’s citation record as evidence of her impact and offer their opinion of her achievements. For example, [REDACTED] states that the Petitioner’s work “demonstrated that hedgehog signaling activation is an important event for the development of human HCCs” and that “[i]t was an outstanding contribution to the liver cancer research community.” 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. Furthermore, an agency “may, in its discretion, use as advisory opinions statements . . . submitted in evidence as expert testimony,” but it is ultimately responsible for making the final determination regarding an individual’s eligibility for the benefit sought. *Matter of Caron Int’l. Inc.*, 19 I&N Dec. 791, 795 (Comm’r 1988). Here, the record does not establish that the citations to the Petitioner’s work on hedgehog pathway signaling and liver cancer have impacted the field in a significant way. Additionally, the letters written on her behalf lack specific details of how her research has influenced the field, and thus cannot establish eligibility for this criterion. Thus, we find that the Petitioner has not demonstrated how her research has impacted the field to constitute an original contribution of major significance.

The record also contains letters referencing the Petitioner’s research on the West Nile virus (WNV). For example, in a letter from [REDACTED], professor in the Department of Animal, Dairy and Veterinary Sciences and Director of the Institute for Antiviral Research at [REDACTED] he states that the Petitioner studied two WNV mutant strains, and claims that “[the Petitioner’s] research results represent important progress toward the development of WNV vaccines.” He states that the Petitioner’s research has demonstrated that these two mutant strains are useful WNV vaccine candidates. Additionally, [REDACTED] an assistant professor in the Department of Molecular and Cellular Neuroscience at the [REDACTED] states that “[the Petitioner] has made important contributions in understanding WNV infection and immune responses” that “have significantly contributed to the research for developing safe and effective WNV vaccines.”

Both authors indicate that their teams have cited to the Petitioner, as have other independent researchers, according to [REDACTED]. Similarly, both authors praise the Petitioner’s work and opine that her research is important to the development of vaccines. However, neither letter provides specific details on how her work has already impacted the field. *See Kazarian*, 580 F.3d at

Matter of G-X-

1036. Therefore, the record does not establish that the Petitioner's work on the WNV qualifies as an original contribution of major significance in the field.

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 record contains evidence that the Petitioner has published scholarly articles in the *Journal of Virology*, and in the journals *Carcinogenesis*, *Oncogene*, *Vaccine*, and *Nature Cell Biology*. We find that the Petitioner meets this criterion.

III. CONCLUSION

The Petitioner is not eligible because she 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 G-X-*, ID# 1559067 (AAO Sept. 18, 2018)