



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

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

MATTER OF H-Y-

DATE: JAN. 18, 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a chemist, 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 Acting 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 ten 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). The regulation at 8 C.F.R. § 204.5(h)(4) allows a petitioner to submit comparable material if he or she is able to demonstrate that the standards at 8 C.F.R. § 204.5(h)(3)(i)-(x) do not readily apply to the individual's occupation.

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 senior chemist at [REDACTED] in [REDACTED] Michigan. Because he has not indicated or 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). In denying the petition, the Director found that the Petitioner met only two of the initial evidentiary 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 the Petitioner served as a peer reviewer of manuscripts for journals. In addition, he authored scholarly articles in professional publications. Accordingly, we agree with the Director that the Petitioner fulfilled the judging and scholarly articles criteria.

On appeal, the Petitioner maintains that he meets one additional criterion, discussed below. We have reviewed all of the evidence in the record and conclude that it does not support a finding that the Petitioner satisfies the requirements of at least three criteria.

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 the Director applied an overly restrictive standard in determining whether he satisfied this criterion. Specifically, the Petitioner asserts that the Director erred by comparing him to others in the field who have garnered substantially more citations to their

published works. For instance, the Director concluded that “while [the Petitioner’s] research demonstrates original contributions in the field, the number of citations of his work, when compared with that of the leading scientists in the field, whose publications . . . have garnered citations numbered well in the thousands, does not substantiate contributions of major significance in the field.” We note that the Director’s decision does include a discussion of the Petitioner’s letters of support, publications, and citation history. In general, the comparison of the Petitioner’s cumulative citations to others in the field is often more appropriate in determining whether the record shows sustained national or international acclaim and demonstrates that he is among the small percentage at the very top of the field of endeavor in a final merits determination if the Director determined he met at least three of the regulatory criteria. *See Kazarian* 596 F.3d at 1115. However, the comparison of citations to a particular scientific article may be relevant for this criterion in order to establish the field’s view of a petitioner’s piece of written work.

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 in the field. Here, we will address the Petitioner’s arguments on appeal and determine whether he has shown original contributions of major significance in the field consistent with the regulation at 8 C.F.R. § 204.5(h)(3)(v).

On appeal, the Petitioner argues that the Director should have focused on whether each of the Petitioner’s original contributions was of major significance instead of concentrating on his cumulative citations. He submits updated screenshots from *Google Scholar* reflecting that 9 of his papers have been cited 455 times, including 8 papers with no citations. Generally, citations can serve as an indication that the field has taken interest in a petitioner’s work. The Petitioner, however, has not sufficiently identified the specific contributions he has made through his written work, nor has he demonstrated that his citations for each of his published articles are commensurate with contributions of major significance.

In reviewing the evidence, his two highest cited articles have been cited 166 [REDACTED] and 149 [REDACTED] times. His remaining articles have been cited 34 times or less. Although the record contains samples of articles that cited to his own work, they do not reflect that his research has been featured or extensively discussed, nor do they distinguish his findings from the hundreds of other articles cited in the papers. While the Petitioner provided evidence reflecting the originality of his work through co-authored publications reporting his discoveries, he has not demonstrated that the overall field views his research and work as being majorly significant.

The Petitioner contends that his “research has been cited at extraordinary rates compared to the norms of his field.” Specifically, he maintains that 1 article [REDACTED] – 149 cites) ranks among the top 0.1%, 1 article [REDACTED] - 166) ranks among the top 1%, and four other articles rank among the top 10% by subject area for the year in which they were published. The comparative ranking to average citation rates does not automatically establish majorly significant contributions to

the field. Rather, a more appropriate analysis, for example, would be to compare the Petitioner's citations to other similarly, highly cited articles, as well as factoring in other corroborating evidence. Publications and presentations are not sufficient under 8 C.F.R. § 204.5(h)(3)(v) absent evidence that they were of "major significance." *See Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009), *aff'd in part*, 596 F.3d 1115. Furthermore, the Petitioner indicates that his articles have been published in journals with "impressive rankings," such as [REDACTED] "40.137" impact factor. A publication that bears a high ranking or impact factor is reflective of the publication's overall citation rate. It does not, however, demonstrate an author's influence or the impact of research on the field. While we acknowledge that prestigious status of [REDACTED] the Petitioner has not demonstrated that publication of his articles in those journals establishes that the field considers his research to be an original contribution of major significance.

Although his citations show that his research has received some attention from the field, the Petitioner did not establish that the number of citations to his individual papers demonstrate their "major significance." While he submitted samples of other articles that cited to his work, they do not distinguish the Petitioner's written work from the other articles cited. Further, the articles do not show the significance of the Petitioner's research to the overall field beyond the authors who cited to his work.¹ Here, the Petitioner has not shown that his published articles through citations rise to a level of "major significance" consistent with this regulatory criterion.

In addition, the Petitioner argues that "commercial entities have licensed his research for development purposes," such as [REDACTED] and [REDACTED]. He also submitted "Materials Transfer Agreement" between the [REDACTED] and [REDACTED] and [REDACTED] claiming that such "licensing agreements show that existing organizations in industry have found value in the material, a strong indicator of significance in a scientific field." Moreover, the record contains a letter from [REDACTED] professor, who stated that "[a]ll of these companies are interested in utilizing our laboratory's self-healing technology as a coating material that is able to self-heal after damage" and "[a]ll of these collaborations are in process, and the ultimate goal of these collaborations is to integrate our self-healing technology into their products." Although the documentation shows interest in his research, the Petitioner did not establish how his work already qualifies as a contribution of major significance in the field rather than prospective, potential impacts. Moreover, as "these collaborations are in process," the significant nature of his research has yet to be determined or measured. Further, the fact that corporations have expressed interest in the Petitioner's research is not necessarily evidence showing that the field views his findings of having been greatly influential.

¹ *See* USCIS Policy Memorandum PM 602-0005.1, *Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator's Field Manual (AFM) Chapter 22.2, AFM Update AD11-14 8-9* (Dec. 22, 2010), <https://www.uscis.gov/policymanual/HTML/PolicyManual.html>; *see also 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).

Similarly, the Petitioner offered evidence reflecting that he is credited on a patent as one of the inventors for [REDACTED]

[REDACTED] A patent recognizes the originality of an invention or idea does not necessarily establish it as a contribution of major significance in the field. While the record shows that his patent has received 19 citations, the Petitioner did not explain how it has greatly impacted or influenced the field or is otherwise considered an original contribution of major significance by the field.

Moreover, the Petitioner contends that his research has received funding from the [REDACTED] and asserts that “funding is highly competitive, and the government grants its financial support to only the most significant scientific research.” However, receiving funding to conduct research is not a contribution of major significance in-and-of-itself. Rather, the Petitioner must establish that receiving grants or similar funding are reflective of his past works’ major significance, or that is his research conducted with the funding resulted in contributions of major significance in the field. Here, the evidence shows that [REDACTED] funding was used for research reported in his [REDACTED] article. However, as discussed above, the Petitioner did not demonstrate that his findings described in the journal article caused a major, significant contribution. In addition, he did not show how the [REDACTED] funding reflected the importance of his contributions to the overall field.

Further, the Petitioner argues that his research has received media coverage. The record contains screenshots from five websites that reported on the Petitioner’s findings. However, the Petitioner did not show that such coverage is indicative of original contributions of major significance in the field. For example, he did not demonstrate that his research and findings resulted in widespread coverage and interest in major publications. Instead, the Petitioner provided screenshots from websites that convey “latest research news” without showing the actual impact on the field. For example, materialstoday.com informed that “[s]cientists have developed a cheap hydrolyzable polymer that can be designed to degrade over time, and which *could* offer a viable alternative to those used in a range of biomedical applications” (emphasis added). Moreover, the screenshot stated that “[t]he findings . . . *could* become dynamic and degradable” and “researchers *hope* to investigate changes of hydrolysis kinetics under various environmental conditions” (emphasis added). While the screenshot established the originality of the Petitioner’s research, it speculates on potential influence and on the possibility of being majorly significant in the future.

Finally, while the Petitioner notes that the record contains recommendation letters praising him for his original contributions, the letters do not demonstrate their major significance to the field. The letters recount the Petitioner’s research and findings, indicate their publications in journals, and mention his citation numbers. Although they detail the novelty of the Petitioner’s research, they do not show why it has been considered of such importance and how its impact on the field rises to the level required by this criterion. The letters contain attestations of the Petitioner’s status in the field without providing specific examples of contributions that are indicative of major significance. For instance, [REDACTED] engineer, described the Petitioner’s “development of one of the first reversible polymers that does not require a catalyst or the addition of thermal energy to convert,” but

did not explain the significance of the research to the field or how it has greatly influenced other researchers or scientists.² Likewise, [REDACTED] professor, discussed the Petitioner's work and findings on projects without specifying how they are considered by the field to be majorly significant. Instead, [REDACTED] mentioned that the Petitioner's "acumen as a scientist that he has consistently published in excellent journals." Letters that specifically articulate how a petitioner's contributions are of major significance to the field and its impact on subsequent work add value.³ On the other hand, letters that lack specifics and use hyperbolic language do not add value, and are not considered to be probative evidence that may form the basis for meeting this criterion.⁴ 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).

For the reasons discussed above, considered both individually and collectively, the Petitioner has not shown that he has made original contributions of major significance in the field.

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 acclaim and recognition 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). Here, the Petitioner has not shown that the significance of his work is indicative of the required sustained national or international acclaim or that it is consistent with a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate that the Petitioner has garnered national or international acclaim in the field, and he is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2).

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

² Although we discuss a sampling of letters, we have reviewed and considered each one.

³ *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8-9.

⁴ *Id.* at 9. *See also Kazarian*, 580 F.3d at 1036, *aff'd* in part 596 F.3d at 1115 (holding that 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).

Matter of H-Y-

ORDER: The appeal is dismissed.

Cite as *Matter of H-Y-*, ID# 1944299 (AAO Jan. 18, 2019)