



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

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

MATTER OF D-D-

DATE: MAY 22, 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a research scientist, seeks classification as an individual of extraordinary ability in the field “radio-optical astrophysics.”¹ 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, finding that the Petitioner had satisfied two of the initial evidentiary criteria, of which he must meet at least three.

On appeal, the Petitioner contends that he meets two additional criteria, relating to making original contributions of major significance in the field and performing in a leading or critical role. See 8 C.F.R. § 204.5(h)(3)(v), (viii). He maintains that he qualifies for the classification.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 203(b)(1)(A) of the Act makes visas available to certain immigrants 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

¹ According to a June 2018 letter from [redacted] a professor at [redacted] University of Technology in the Netherlands, the field of radio-optical astrophysics is “new and rapidly developing” and it is “a sophisticated blend of traditional radio and optical astronomy and astrometry with advanced applied mathematics, computer science and information technologies.”

- (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 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 the petitioner does not submit this evidence, then he or she must provide documentation that meets at least three of the ten criteria listed under 8 C.F.R. § 204.5(h)(3)(i)-(x) (including items such as qualifying awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the submitted material in a final merits determination and assess whether the record, as a whole, 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, 1119-20 (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, 1343 (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’s resume and other documents show that he received his Doctor of Philosophy degree in astrometry and celestial mechanics in 2012 from [redacted] University. He worked as a postdoctoral scholar at the [redacted] between 2015 and 2018, and then became a research scientist at [redacted] in September 2018. According to his June 2018 statement, “[f]or more than eight years, [he has] been carrying out research in the area of Radio-Optical Astroinformatics.”

The Director concluded that the Petitioner met the participation as a judge criterion under 8 C.F.R. § 204.5(h)(3)(iv) and the authorship of scholarly articles criterion under 8 C.F.R. § 204.5(h)(3)(vi). The record supports this conclusion. Specifically, the Petitioner has offered evidence from professional publications, including *Astronomy and Computing*, *Journal of Geodesy*, and *Baltic Astronomy*, confirming that he served as one of their manuscript reviewers. In addition, the record establishes that he has authored scholarly articles that were published in professional journals. The *Astronomical Journal* published his [redacted] article, and *Experimental Astronomy* published his [redacted] article. Although he has satisfied two criteria under 8 C.F.R. § 204.5(h)(3)(iv) and

(vi), as we will discuss below, he has not demonstrated, by a preponderance of the evidence,² that he meets the initial evidence requirements of satisfying at least three criteria.³

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 maintains that he meets this criterion. To satisfy this criterion, he must establish that not only has he made original contributions but that they have been of major significance in the field. Major significance in the field may be shown through evidence that his research findings or original methods or processes have been widely accepted and implemented throughout the field, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance in the field. 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/sites/default/files/USCIS/Laws/Memoranda/i-140-evidence-pm-6002-005-1.pdf>.

The record is insufficient to demonstrate that the Petitioner has satisfied the criterion under 8 C.F.R. § 204.5(h)(3)(v). The Petitioner has published approximately 20 peer-reviewed articles. A 2018 online Google Scholar printout provides that the articles have received a total of 326 citations. The Google Scholar printout indicates that his most cited work is his 2012 article [REDACTED] [REDACTED] which has been cited 72 times, and that his other articles have each received no more than 34 citations.

The Petitioner has not presented sufficient evidence showing that the citation frequency, assuming it is accurate, confirms that his work has provoked widespread commentary or received notice from others in the field at a level consistent with “contributions of major significance in the field.” Although the record includes some articles showing that the authors cited to his work and relied on his [REDACTED] and [REDACTED], as well as [REDACTED] in their studies, the Petitioner has not sufficiently demonstrated that his work has been cited as authoritative in the field or has otherwise influenced the field in a significant way. See USCIS Policy Memorandum PM 602-0005.1, *supra*, 8.

The record also includes a Google Scholar printout listing the Petitioner's 2012 article as a top search result for the search query [REDACTED]. As discussed, to satisfy this criterion, a petitioner must demonstrate his work's impact in the field as a whole. Even assuming *arguendo* that the Petitioner has contributed to one aspect in the field, without evidence of his impact in the field, as a whole, he has not met this criterion. The documentation in the record is insufficient to confirm that his work on [REDACTED] has influenced the field of “radio-optical astrophysics,” as a whole, rising to the level of “major significance.”

² If a petitioner submits relevant, probative, and credible evidence that leads U.S. Citizenship and Immigration Services (USCIS) to believe that the claim is “more likely than not” or “probably true,” the petitioner has satisfied the “preponderance of the evidence” standard of proof. See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 4.

³ The Petitioner has not alleged, and the record does not demonstrate, that he has received a major, internationally recognized award. See 8 C.F.R. § 204.5(h)(3). As such, he must provide documentation that meets at least three of the ten criteria listed under 8 C.F.R. § 204.5(h)(3)(i)-(x) to satisfy the initial evidence requirements.

⁴ The record indicates that [REDACTED]

The Petitioner has offered evidence showing that he has been invited to participate in a number of projects, including developing a new [redacted] vision document, becoming a member of [redacted] Committee, collaborating with the Joint Institute for [redacted] and speaking at seminars. This evidence shows that he has been active and has shared his findings with others in the field. Such documentation, however, is insufficient to satisfy this criterion because it does not confirm that the impact of his work has risen to the level of major significance in the field. See USCIS Policy Memorandum PM 602-0005.1, *supra*, 8.

Similarly, evidence relating to the Petitioner's research activities does not demonstrate that he meets this criterion. The record shows that he has been named the principal investigator or co-investigator in a number of studies, and that he has been involved in studies that are funded by well-known organizations, such as the [redacted] Foundation. Receiving funding to conduct research, without more, is not a contribution of major significance in the field. Rather, the Petitioner must establish that receiving grants or other similar funding are reflective of his past works' major significance, or that his research conducted with the funding resulted in contributions of major significance in the field. He has not made such a showing.

In addition, while the record includes a number of reference letters, they are insufficient to confirm that the Petitioner satisfies this criterion. [redacted] a member of the management team of the [redacted] in the Netherlands, and [redacted] an assistant professor at the University of [redacted] in South Africa, indicate that researchers in the field have implemented the Petitioner's work, finding it to be important. According to [redacted] a professor for space geodesy at [redacted] University of Technology in Sweden, "[the Petitioner's] models have been incorporated into [redacted] [redacted] operational software and have proven to be critical in [its] recent work, where [it] laid the base for novel observing concepts to improve both [redacted] [redacted] the director of the [redacted] in New Zealand, provides that the Petitioner "introduced and implemented an innovated [redacted] technique that significantly extends the capacities of the so-called [redacted] [redacted]" In an August 2018 letter, [redacted] a professor of astronomy at [redacted] states that "senior staff astronomers at NASA's [National Aeronautics and Space Administration] Jet Propulsion Laboratory (JPL) and the U.S. Naval Observatory (USNO)" have expressed interest in hiring the Petitioner.

These letters confirm that the Petitioner's work has value and has added to the general pool of knowledge in the field. Other letters similarly praise his research. For example, [redacted] an associate professor at the [redacted] University of Technology (TU [redacted] in the Netherlands, states that scientists have "continue[d] to build on the work [the Petitioner] has done, for which his insight and input has been, and will continue to be, invaluable." [redacted] the director of [redacted] Observatory, explains that the Petitioner's "approach to precision [redacted] is strongly rooted in established techniques such as [redacted] but add a nuanced framework that allow these techniques to work on very narrow-band signals."

While the record, including the reference letters, establishes that the Petitioner's research has value and has received some attention in the field, it is insufficient to confirm that the impact or influence of his work has risen to the level of "major significance" in the field. See *Kazarian*, 596 F.3d at 1122

(finding that “letters from physics professors attesting to [a petitioner’s] contributions in the field” were insufficient to meet this criterion); *Visinscaia*, 4 F. Supp. 3d at 134-35 (upholding a finding that a ballroom dancer had not met this criterion because she did not demonstrate her impact in the field as a whole); see also USCIS Policy Memorandum PM 602-0005.1, *supra*, 8-9 (providing that “[l]etters that lack specifics and simply use hyperbolic language do not add value, and are not considered to be probative evidence that may form the basis for meeting this criterion”). The Petitioner has not sufficiently shown that his research – which has led to incremental advancements in the field, as such are expected in any original research – qualifies as contributions of major significance in the field. For example, he has not presented evidence demonstrating that his research has provoked widespread commentary, has been referenced as authoritative, or has received notice from others at a level indicative of its “major significance” in the field, as required under the criterion. See *Kazarian v. USCIS*, 580 F. 3d 1030, 1036 (9th Cir. 2009), *aff’d in part*, 596 F. 3d 1115, 1122 (9th Cir. 2010); USCIS Policy Memorandum PM-602-0005.1, *supra*, at 8-9. Accordingly, based on the relevant documents in the record, the Petitioner has not shown, by a preponderance of the evidence, that he has made original contributions of major significance in the field.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. 8 C.F.R. § 204.5(h)(3)(viii).

The Petitioner asserts that he meets this criterion. To satisfy this criterion, the evidence must establish that he is or was a leader. See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 10. If he claims to have performed a critical role, then he must establish that the role is or was of significant importance to the outcome or standing of the organization or its activities. A supporting role may be considered “critical” if his performance in the role is or was important in that way. It is not the title of the Petitioner’s role, but rather his performance in the role that determines whether the role is or was critical. *Id.*

The record is insufficient to demonstrate that the Petitioner satisfies this criterion. While the documents show that he has played a critical role for certain studies, he has not established that he has played a leading or critical role for a qualifying organization or establishment. According to an August 2018 letter from [redacted], the Petitioner “has been critical for the success of two large-scale projects lead by [redacted] [redacted] the first robotic laser guide star adaptive optics system, and [redacted] a wide-field sky astronomical survey using a new camera attached to the [redacted] at the [redacted] in California.” The Petitioner has submitted materials indicating that [redacted] is a university that has wide-ranging “research interests from quantum science and engineering to bioinformatics and the nature of life itself, from human behavior and economics to energy and sustainability.” The Petitioner has not sufficiently demonstrated that his work on two projects confirms that he has performed a leading or critical role for [redacted] as a whole.

Similarly, while the Petitioner has offered reference letters detailing his work, the record does not establish that he meets this criterion. For example, according to [redacted] July 2018 letter, while employed as a [redacted] support scientist, the Petitioner made contributions to a number of research projects, and “pioneered the [redacted] technique, a modification of traditional [redacted] that allows [redacted]” The evidence shows that [redacted] is the principal

investigator for the [REDACTED]), which is one of eleven [REDACTED]⁵ experiments. [REDACTED] explains that the Petitioner's work "lies at the foundation" of the experiment. The record is insufficient to establish that the Petitioner's role was leading or critical for [REDACTED] as a whole. For example, he has not offered corroborating evidence confirming that he has held a leadership position within [REDACTED] or is responsible for duties that make him a leader, or that he has contributed in a way that is of significant importance to the outcome or standing of [REDACTED] as a whole. While most individuals involved with an organization will likely have some impact on the entity, to establish a critical role, the Petitioner must document that his work is crucial to the success of the entity. The Petitioner has not made such a showing here. Based on these reasons, he has not established, by a preponderance of the evidence, that he meets this criterion.

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, upon a review of the record in its entirety, we conclude that it does not support a finding that he has established the acclaim and recognition required for this classification.

The Petitioner seeks a highly restrictive visa classification, intended for individuals who are 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 academic, scholarly, research, and professional accomplishments 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; 8 C.F.R. § 204.5(h)(2).

The record does not establish that the Petitioner qualifies for classification as an individual of extraordinary ability. The appeal will therefore be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012). Here, that burden has not been met.

⁵ According to a printout from [REDACTED] that the Petitioner has submitted, [REDACTED] "is the first large-class mission in [REDACTED] 2015-2025 programme. Planned for launch in 2022 and arrival t [REDACTED] in 2029. it will spend at least three years making detailed observations of the [REDACTED]";

Matter of D-D-

ORDER: The appeal is dismissed.

Cite as *Matter of D-D-*, ID# 3280465 (AAO May 22, 2019)