



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

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

MATTER OF K-R-

DATE: MAY 30, 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 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 shown that he met only two of the ten initial evidentiary criteria, of which he must meet at least three.

On appeal, the Petitioner submits additional evidence and contends that he qualifies as an individual of extraordinary ability.

Upon *de novo* review, we will sustain 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 research scientist in  As he has not established that he has received a major, internationally recognized award, he must satisfy at least three of the ten criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x).

### A. Evidentiary Criteria

In denying the petition, the Director found that the Petitioner met the criteria for 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) but not for awards, published material, original contributions of major significance, and leading or critical role under 8 C.F.R. § 204.5(h)(3)(i), (iii), (v), and (viii), respectively.

Here, we agree with the Director that the evidence in the record sufficiently demonstrates that the Petitioner meets the criteria for judging and scholarly articles based on his work as a peer reviewer and his authorship of scholarly articles. We further find that the record establishes that he meets the criterion for published material as shown by the articles about him relating to his work in the field that were published in the professional journals *Nature* and *Science*. Accordingly, the Petitioner has satisfied three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3). We will evaluate the totality of his documentary evidence in the context of the final merits determination below.

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, that he has sustained national or international acclaim and 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 find that he has established his eligibility.

The record indicates that the Petitioner is an assistant researcher at the [redacted] [redacted] at the University of [redacted] [redacted]. The record also reflects that he is a data science fellow in the [redacted], and in that role he has developed tools for other researchers to build upon the research of others by promoting access to the scientific data underlying researchers' conclusions. As will be discussed further below, the record reflects that the Petitioner has been instrumental in securing over \$3.6 million in research funding within the [redacted] program at [redacted] the record contains evidence of published material about him and his work in highly regarded professional journals, and he has served on respected editorial boards. In addition, his contributions have been noted within [redacted] and internationally through his work as a co-founder of [redacted] and through his presentations at international conferences, his scholarly articles have been highly cited, and his leadership at [redacted] has contributed to its mission. When viewed together, the evidence in the record demonstrates that the Petitioner has sustained national or international acclaim and that his achievements have been recognized in the field to show that he is "one of that small percentage who [has] risen to the very top of the field of endeavor" under 8 C.F.R. § 204.5(h)(2)-(3).<sup>1</sup>

As part of the Petitioner's role as a [redacted] fellow at [redacted], the record reflects that he has served as the principal investigator in which the [redacted] Foundation awarded a grant in the amount of \$499,999 to develop an institute for research software. The record indicates that the Petitioner also was designated the principal investigator at [redacted] over a grant of \$301,383 from the [redacted] Foundation to develop open source research software and training. Finally, the record shows that the Petitioner played an important part of [redacted] receiving a grant from the [redacted] [redacted] Trust in the amount of \$2,875,071. [redacted], the former program officer of this trust, states that "[the Petitioner] was selected from an international pool of highly qualified applicants" and that "[t]he single most important criteria for selection of grants . . . [is] the reputation and record of achievement of the principal investigator." Similarly, [redacted] an advisor for strategy and program director for this trust, states that "[t]his grant is a testament to the work [the Petitioner] has completed and a recognition of the accomplishments and continued potential of [redacted] to benefit biomedical research nationally and internationally."

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<sup>1</sup> 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 13* (Dec. 22, 2010), <https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/i-140-evidence-pm-6002-005-1.pdf>.

The record contains published material about the Petitioner and his work in the field in professional journals such as *Nature* and *Science* which contribute to his acclaim in the field. In a letter from [redacted] [redacted] associate editor for *Nature*, she states that “*Nature’s* primary audience consists of practicing scientists” but that “the journal is also internationally renowned for its coverage of science news and issues pertaining to science policy and culture,” noting that “some pieces are expressly conceived to make important research milestones understandable to a wider public.” [redacted] adds that “[i]t is difficult to overstate the relevance of being featured in an issue of *Nature*: it is a career milestone that few scientists achieve.”

The Petitioner’s participation as a judge of others’ work also demonstrates that he has risen to the very top of his field. The record indicates that the Petitioner has received and completed independent requests to review a substantial number of manuscripts for many top-ranked professional publications and that he is the founding editor of the [redacted], an associate editor for the journal [redacted], and a subject editor for the [redacted] journal. We find the Petitioner’s judging experience, together with the additional evidence in the record, to be consistent with a determination that he is among the small percentage at the top of his field of endeavor. See 8 C.F.R. § 204.5(h)(2).

Regarding the Petitioner’s original contributions in the field, the record contains a letter from [redacted] [redacted] professor of physics, director of [redacted] and a 2011 [redacted] in physics. He states that the Petitioner “co-founded [redacted]” which is “[redacted] [redacted]” He indicates, “[b]y completing the research data pipeline, [the Petitioner’s] work has not only dramatically increased accountability in science, but also made it possible for anyone in the world to use open-source software to answer entirely new questions to solve pressing problems such as climate change, food security, and habitat loss.” The record reflects that the Petitioner has presented his work at international conferences such as the [redacted] in 2014 and that he served on the organizing committee for this conference in 2016. He has also presented in the United Kingdom, Switzerland, New Zealand, and Australia pertaining to open science and reproducible research.

With respect to his scholarly articles, the Petitioner has provided evidence of his authorship of a considerable amount of published material in distinguished professional journals. As authoring scholarly articles is inherent to scientists and researchers, the citation history or other evidence of the influence of the Petitioner’s articles is an important indicator of the impact and recognition that his work has had on the field and whether such influence has been sustained. In this case, the Petitioner has offered a report from Google Scholar reflecting a high number of citations to his published work from 2013 to the present. The Petitioner has offered evidence that his published material is frequently and consistently cited, and the record reflects that his work continues to be cited at a level commensurate with being at the very top of the field and demonstrates that his publication record sets him apart through a “career of acclaimed work in the field.” See H. Rep. No. 101-723, at 59 (Sept. 19, 1990).

As to the Petitioner’s leading or critical role, the record contains significant evidence of his work as a [redacted] fellow at [redacted]. [redacted] dean of the college of natural resources at [redacted]

[redacted] and a [redacted] senior fellow, discusses the Petitioner's role with the [redacted] program at [redacted] the amount of funding he helped raise for research endeavors, and the recognition the [redacted] program has received. [redacted] adds that "[the Petitioner] is one of [redacted] most valued and respected Data Scientists, whose research and leadership have played a critical role positioning the university as a global epicenter for data science research and education." Together with the evidence discussed above, this indicates that he has risen to the very top of his field with sustained national or international acclaim. See section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2)-(3)

### III. CONCLUSION

The Petitioner has shown that he meets at least three of the evidentiary criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x). He has also demonstrated sustained national and international acclaim and that his achievements have been recognized through extensive documentation. He therefore qualifies for classification as an individual of extraordinary ability.

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 been met.

**ORDER:** The appeal is sustained.

Cite as *Matter of K-R-*, ID# 2906883 (AAO May 30, 2019)