



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

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

MATTER OF P-T- LLC

DATE: OCT. 21, 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, an electrical products manufacturer, seeks to classify the Beneficiary as an individual of extraordinary ability. *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, concluding that the Petitioner established that the Beneficiary satisfied only two of the ten evidentiary criteria, of which he must meet at least three.

On appeal, the Petitioner submits additional evidence and asserts that the Beneficiary meets at least four of the ten evidentiary criteria and qualifies for the requested classification.

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

I. LAW

Section 203(b)(1)(A) of the Act makes visas available to qualified 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 Beneficiary is currently the Petitioner’s director of research and development and previously held the positions of electronics design engineer and principal design engineer within the petitioning company.

Because the Petitioner has not indicated or established that the Beneficiary 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). In denying the petition, the Director found that the Beneficiary met only two criteria. On appeal, the Petitioner maintains that the Beneficiary meets at least two additional criteria.

We have reviewed all of the evidence in the record, and conclude it does not support a finding that the Petitioner satisfies the requirements of at least three criteria.

A. Evidentiary Criteria

Evidence of the individual’s membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields. 8 C.F.R. § 204.5(h)(3)(ii).

The Petitioner submitted evidence that the Beneficiary was elevated to the grade of “senior member” in the Institute of Electrical and Electronics Engineers (IEEE) in July 2018, approximately six months

after the filing of this petition. Therefore, this evidence cannot establish his eligibility at the time of filing and we will not further address it. See 8 C.F.R. § 103.2(b)(1). A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm’r 1998). That decision, citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981), further provides that USCIS cannot “consider facts that come into being only subsequent to the filing of a petition.” *Id.* at 176.

The Petitioner also referenced evidence reflecting that the Beneficiary serves as the vice chair of the [redacted] and member of the faculty selection committee for the electrical and computer engineering department of the [redacted] School of Mines and Technology. While these positions are notable, the Petitioner has not established that they equate to “membership in associations” in the field, or provided evidence that his membership on the advisory board or selection committee required outstanding achievements as judged by national or international experts in his field.¹ We agree with the Director’s determination that this criterion has not been met.

Evidence of the individual’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 Director found that the Petitioner submitted evidence satisfying this criterion. The record indicates that the Beneficiary has served as a peer reviewer of manuscripts for several IEEE journals and conferences. Accordingly, we agree with the Director’s determination that he meets this criterion.

Evidence of the individual’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 Beneficiary’s research and inventions have led to scientific, scholarly, and business-related contributions of major significance in his field. In order to satisfy the regulation at 8 C.F.R. § 204.5(h)(3)(v), a petitioner must establish not only that the individual beneficiary has made original contributions, it must also demonstrate that the contributions are 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.

This regulatory criterion contains multiple evidentiary elements that the Petitioner must satisfy. It must demonstrate that the Beneficiary’s contributions are original and scientific, scholarly, artistic, athletic, or business-related in nature. The contributions must have already been realized, rather than being prospective possibilities. It must also establish that the contributions 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

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 6* (Dec. 22, 2010), <https://www.uscis.gov/policymanual/HTML/PolicyManual.html>. (providing an example of admission to membership in the National Academy of Sciences as a Foreign Associate, which requires individuals to be nominated by an academy member, and membership is ultimately granted based upon recognition of the individual’s distinguished achievements in original research).

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). “Contributions of major significance” connotes that the petitioner’s work has significantly impacted the field. See *Visinscaia*, 4 F. Supp. 3d at 134.

The Petitioner claims that the Beneficiary “has solved previously intractable problems in the fields of [redacted] and electrical engineering . . . to the widespread acclaim of and use by his colleagues, domestically and abroad.” In addition, the Petitioner asserts that he has “produced novel commercial products with substantial benefits above and beyond the product lines theretofore available in his field.” The Petitioner contends that the Director was dismissive of the submitted opinion letters and the significance of the Beneficiary’s research and inventions.

The Petitioner submitted: evidence that it has two U.S. patents and one pending patent application which name the Beneficiary as a co-inventor; several letters from professors, researchers, and clients who are familiar with the Beneficiary’s work; and citation data for the Beneficiary’s published articles. On appeal, the Petitioner asserts that the expert opinion letters amply demonstrate the Beneficiary’s qualification under this criterion, and maintains that the Beneficiary has shown that his work has positively affected not only “his employer (substantially) and its customers and its customers’ customers, but also numerous academic entities and dozens of colleague researchers domestically and abroad.”

Regarding the letters from the professors and researchers in the record, 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).

The Petitioner submitted a letter from its CEO, [redacted] who described the Beneficiary’s “notable scientific achievements,” and specifying that he has contributed to the development of more than 80 commercial products that are used in oil and gas production, irrigation, solar, and wind renewable energy. He highlights three products in particular, explaining that the Beneficiary is co-inventor of the company’s [redacted] that [redacted] reduces input line harmonics . . . and maintains constant DC voltage on the bus capacitor.” [redacted] describes the product as “the only [redacted] low harmonic, [redacted] in the world,” and states that it has been widely adapted in industries such as wind power and agricultural irrigation,” noting that previously there was [redacted]” He also notes that this product is the only [redacted] that complies with the IEEE 519 that is increasingly used by U.S. electric utilities. Finally, [redacted] explained that the product was “widely discussed and reviewed by Electronic Power Research Institute (EPRI) magazine as a major advancement in solutions for pumping water in rural areas”² and that it has generated more than \$8 million in revenue to date.

² The Petitioner submitted a [redacted] 2014 *PO TechWatch* report published by EPRI and titled [redacted] In this publication, EPRI reported on the performance characteristics of the Petitioner’s [redacted]. This does not appear to be the same [redacted] product discussed in [redacted]’s letter as that product was patented in 2015.

[redacted] further states that the Beneficiary designed a patented “revolutionary [redacted] with auxiliary power supply” which resulted in development of a series of [redacted] for the [redacted] irrigation market, resulted in \$2 million in sales in 2017, and directly led to the addition of 15 new employees. In addition, he highlights a newly launched, patent-pending “[redacted] [redacted] that will [redacted] into a balance [redacted] [redacted] with voltage unbalance as low as 1%.” He describes this as a “major advancement in [redacted],” and the first and only [redacted] in the world. The Petitioner also submitted a letter from its previous chief technology officer, [redacted] who highlights the Beneficiary’s work on the Petitioner’s [redacted] noting that “this solution has eluded workers in the field for many years, and is quite a breakthrough.”

A letter from the Petitioner’s customer, [redacted] Director of [redacted] Water Management, states that he is acquainted with the Beneficiary’s work through visits to the Petitioner and through the [redacted] and [redacted] products that are based on the Beneficiary’s research. [redacted] indicates that he has found these to be “unique and technologically advanced products” and believes that “they represent significant advances in [redacted].” He discusses the complexity of [redacted] irrigation and pumping systems and the challenges of operating them in rural environments. [redacted] also highlights that no other company provides a [redacted] that complies with the IEEE 519 standard enforced by some electric utilities, and states that some of his company’s customers could not otherwise benefit from using a [redacted] in their farming operations. He concludes that the Beneficiary’s research is “critical to the advancement of agricultural irrigation solutions in the United States.”

The Petitioner also provided a letter from [redacted], professor of electrical and computer engineering at the [redacted] School of Mines & Technology. [redacted] states that he is familiar with the Petitioner “as an innovative company” and with the Beneficiary, noting that he has “impressed with his contributions to his company and to the electronics industry at large.” He notes that the Beneficiary’s research has led to “groundbreaking solutions for the cost-effective [redacted] to feed power from unconventional energy sources, such as wind and solar, to the [redacted] power grid.” [redacted] also notes the Beneficiary’s work on the [redacted] calling the Petitioner’s products a “significant advance in the state of the art for this type of product.”

While these letters establish that the Beneficiary’s research and development work with the petitioning company is original, the expert opinion evidence does not explain how the work has already significantly impacted the field. The Petitioner must demonstrate that the Beneficiary’s contributions rise to the level of major significance in the field as a whole, rather than to an organization. While there appears to be agreement that the research he has performed has the potential for wide application, the Petitioner has not submitted evidence that the Beneficiary’s original contributions were considered to be of major significance in the field as of the date of filing. Notably, while [redacted] stated that the Beneficiary is able to “convert research results into commercialized products that revolutionize industries and affect the quality of lives all over the world” he does not elaborate as to how the Beneficiary’s work in the development of [redacted] has already resulted in this type of major impact. Instead, he goes on to state that the Beneficiary’s “inventions and research have had a profound impact on the development of [the Petitioner] and on the manufacturing economy of a small town like [redacted],”

The Petitioner also submitted letters from two individuals who state that they rely on the Beneficiary's published research in [redacted] in their own work. [redacted] a Team Scientific Coordinator at the [redacted] in the Netherlands, states that he cited the Beneficiary's 2009 paper [redacted] in his "papers and research." He explains that [redacted] requires the solving of complicated partial differential equations that can only be solved with approximation methods, and indicates that the Beneficiary "developed a novel approximation technique to solve these equations and successfully applied such techniques to industrial applications." He notes that the referenced paper "has already been cited by more than 40 researchers from various countries across the globe³; many have replicated his results and used his published research to their research and publications." [redacted] describes the Beneficiary's work on [redacted] as an "extremely significant contribution to our field."

Similarly, [redacted] assistant professor of robotics and mechatronics at [redacted] University in Kazakhstan, states that he has not worked with the Beneficiary but knows of his research on [redacted] and has cited his work [redacted]. [redacted] explains that the Beneficiary was "the first person to successfully implement the [redacted] based algorithms to [redacted]" and adds that "many researchers around the world have taken an interest in these techniques due to fast stabilization, a wide operating range, and good dynamic performance." He indicates that the citations to the Beneficiary's research "have led to international interest in applying his results to new research."

While both [redacted] and [redacted] describe the Beneficiary's research in [redacted] as novel or original, neither provided a sufficient explanation to support a conclusion that the work represented a major contribution in the field, and neither articulated how they or other researchers have been influenced by the Beneficiary's novel techniques in this area. The fact that the Petitioner has published articles that other researchers have referenced is not, by itself, indicative of a contribution of major significance. Publications 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. .

Finally, the Petitioner submitted letters from two scientists who supervised the Beneficiary's work while he was in graduate school. One letter is from [redacted], a retired senior scientist from the [redacted] in [redacted] India who supervised the Beneficiary's master's degree research completed at [redacted]. [redacted] states that the Beneficiary made "an original and substantial contribution to the field of [redacted] through developing new [redacted]. [redacted] summarized the Beneficiary's work on an [redacted] project, and described it as "pioneering work" that "has been used by the researchers and engineers at [redacted]." He also describes the Beneficiary's work in [redacted] with the Petitioner and concludes that the Beneficiary "has substantially contributed to the development of advanced power electrics and controls for industrial applications."

³ The Petitioner submitted evidence that the Beneficiary's article titled [redacted] has been cited by 15 other researchers since its publication in 2009; the Beneficiary reported 41 total citations to his entire body of published work.

[redacted] Emeritus Professor of Electrical & Computer Engineering at the [redacted] University, [redacted] also provided a letter in support of the petition. [redacted] who advised the Beneficiary on his doctoral dissertation, states that “the contributions he has made in the development of [redacted] are exemplary and have resulted in prolific applications in the industrial electronics and [redacted] industries” and have “greatly impacted [the Petitioner] and agricultural irrigation.”

Letters that specifically articulate how an individual’s contributions are of major significance to the field and its impact on subsequent work add value, however, letters that lack specifics do not add value and are not considered to be probative evidence that may form the basis for meeting this criterion.⁴ While these letters describe with some specificity how the Beneficiary has made original contributions to innovative products developed by the Petitioner, the record does not sufficiently detail how the Beneficiary’s research has been implemented outside of the Petitioner’s and its customers’ businesses, or indicate how the Beneficiary’s inventions have already significantly and demonstrably impacted the field. The record does not contain, for example, detailed explanations or independent evidence of the “prolific applications” of the Beneficiary’s research mentioned by [redacted]

As noted, the Beneficiary has been listed as a co-inventor on two U.S. patents and had a third pending patent application when the petition was filed. A patent recognizes the originality of the idea, but it does not by itself demonstrate that the inventor made a contribution of major significance in the field. Rather, the significance of the innovation must be determined on a case-by-case basis. While several of the submitted letters addressed the significance of the products co-invented by the Beneficiary, the supporting letters, for the reasons already discussed, are lacking an explanation as to how these products have made an impact of major significance in the field.

Finally, the record also contains information from Google Scholar listing the number of citations for each of the Beneficiary’s five publications. The Petitioner has not established that the documented citation rate (demonstrates that the Beneficiary’s work has been widely implemented in the field or that it has had a major influence. The Petitioner has not provided, for example, information that compares the Beneficiary’s citations to other similarly, highly cited articles that the field views as having been of major significance. Although these citations show that the Beneficiary’s research has received attention from the field, the Petitioner has not shown that the number of citations to his individual papers is indicative of significant influence in the field.

For the reasons discussed above, the Petitioner has not established that the Beneficiary has made original scientific contributions of major significance in the field.

Evidence of the individual’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 Director determined that the Petitioner submitted evidence demonstrating that the Beneficiary meets this criterion. The record reflects that the Beneficiary authored scholarly articles published by

⁴ 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 6 (Dec. 22, 2010), <https://www.uscis.gov/policymanual/HTML/PolicyManual.html>.

the *American Control Conference, North American Power Symposium, and Conference on Computational Intelligence and Multimedia Applications*. Thus, the Petitioner has established that the Beneficiary meets this criterion.

Evidence that the individual 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 Director determined that the record contained evidence that the Beneficiary performs in a leading or critical role for the Petitioner. However, the Director found that the Beneficiary did not meet this criterion because the Petitioner did not provide evidence establishing its distinguished reputation.

We agree that the Petitioner submitted sufficient evidence of the Beneficiary's critical role in its organization as its principal design engineer and director of research and technology. In a request for evidence (RFE), the Director advised the Petitioner that it would need to provide evidence of its distinguished reputation in order to establish that the Beneficiary meets this criterion.

The Petitioner responded as follows:

[The Petitioner] operates in a niche market and does not generally itself receive press coverage. Nevertheless, it is recognized as a leader in its field resulting in, *inter alia*, reviews by the Electric Power Research Institute, the leading public interest research organization in its field . . .; the recommendation of its products by major international manufacturers . . .; and the acclaim of his colleagues in their references.

As noted, the Petitioner provided a copy of EPRI's [redacted] 2014 *PQ Techwatch* report on [redacted]. The report provides an overview of the types of products available to serve [redacted] agricultural equipment in rural areas that receive only [redacted] electrical supply. The Petitioner's [redacted] is discussed in the report's section on "[redacted]" and the EPRI notes the positive results of its own laboratory evaluation of the product. The Petitioner did not provide any additional information regarding EPRI or its publications and has not shown that inclusion of one of its products in this overview of available [redacted] solutions is indicative of the company's distinguished reputation.

The Petitioner also provided a "Site Preparation Guide" for the [redacted] Printer. The guide advises the user that the printer requires [redacted] power, and states that the Petitioner's [redacted] is "the recommended [redacted] for the printer." On appeal, the Petitioner also submits marketing reports reflecting that [redacted] is the leading supplier of large format printers. The Petitioner maintains that [redacted] recommendation of its [redacted] product is indicative of its distinguished reputation. In addition, the Petitioner references [redacted]'s support letter, noting that it demonstrates that the company "has received recognition within its industry and through use by other eminent organizations." The Petitioner's reliance on the reputations of [redacted] and [redacted]'s organization ([redacted] Water Management, described as a startup business unit within [redacted] Irrigation), is not sufficient to establish its own distinguished reputation in the field.

The Petitioner also submitted its own marketing materials, which indicate that the company was founded in 1999 and “is recognized as a world leader in [redacted] technologies” but this claim is insufficient to meet its burden absent corroborating evidence of its reputation in the industry. Finally, the Petitioner states that it “has established that it is a distinguished organization because of its market position, commercial successes, and reputation.” However, the record does not contain independent evidence that would enable us to compare the Petitioner’s market position, commercial success and reputation to that of its competitors in the industry. Accordingly, the Petitioner has not established that the Beneficiary meets this criterion.

B. Summary

The Beneficiary is not eligible because the Petitioner 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 119-20. Nevertheless, we advise that we have reviewed the record in the aggregate, and conclude that it does not support a finding that the Beneficiary has established the level of expertise 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 the Beneficiary’s scientific and business-related 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 Beneficiary 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).

III. CONCLUSION

The Petitioner has not shown that the Beneficiary qualifies for classification as an individual of extraordinary ability under section 203(b)(1)(A) of the Act. The appeal will be dismissed for the above stated reasons. 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.

ORDER: The appeal is dismissed.

Cite as *Matter of P-T- LLC*, ID# 5214358 (AAO Oct. 21, 2019)