



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

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

MATTER OF D-R-

DATE: OCT. 29, 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a researcher in the biomedical technology field, seeks classification 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 Form I-140, Immigrant Petition for Alien Worker, concluding that the Petitioner had satisfied only two of the ten initial evidentiary criteria for this classification, of which he must meet at least three.

On appeal, the Petitioner submits additional documentation and a brief, asserting that he has provided evidence satisfying five of the ten criteria and has demonstrated his eligibility as an individual of extraordinary ability.

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 the 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

### A. Evidentiary Criteria

Because the Petitioner 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 determined that the Petitioner met only two of the ten initial evidentiary criteria. The Director determined that the Petitioner has authored scholarly articles in his field under 8 C.F.R. § 204.5(h)(3)(vi), and the record supports this finding. For example, the record reflects that the Petitioner has co-authored peer reviewed articles in publications such as *Analytical Chemistry*, *Journal of the American Chemical Society*, and *Langmuir*. Further, the Director determined, and the evidence demonstrates, that the Petitioner has participated as a judge of the work of others in his field under 8 C.F.R. § 204.5(h)(3)(iv) by peer reviewing manuscripts submitted to the scientific journals *Lab on a Chip* and *Langmuir*, and by serving as an editor for the *Journal of Biosensors, Biomarkers and Diagnostics*.

On appeal, the Petitioner asserts that he also submitted evidence demonstrating that he meets the published material criterion, that he has made original contributions of major significance in his field, and that he has performed in a leading or critical role for organizations that have a distinguished reputation.

*Published material about the individual in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation. 8 C.F.R. § 204.5(h)(3)(iii)*

In addition to the two criteria granted by the Director, we find that the Petitioner has provided evidence that satisfies the published material criterion at 8 C.F.R. § 204.5(h)(3)(iii). The Petitioner submitted an article titled "[redacted]" published in a 2016 issue of *American Scientist*, a publication of Sigma Xi, The Scientific Research Honor Society. The publication interviewed the Petitioner about the work he and his team were performing at his then-current employer, [redacted] as part of a series titled "Meet Your Fellow Companion" which features a Sigma Xi member.

The Petitioner also submitted an article titled "[redacted]" published in the [redacted] 2010 issue of *Chemical & Engineering News*, a publication of the American Chemical Society. The article discusses the student poster competition held at the 2010 [redacted] conference, "which attracted 2000 hopeful chemistry students." The article names the Petitioner as one of the 43 winners of the competition and provides the title of his poster presentation. However, the article is not about the Petitioner and his work, it is about the poster competition.

Subsequent to the initial submission, the Petitioner provided a [redacted] 2018 article titled "[redacted]" published by the website "Healthline.com," which includes a quote from the Petitioner in response to research results published by another scientist. This article is about research published by others and is not about the Petitioner and his work in the field and it is not accompanied by evidence establishing that "Healthline.com" qualifies as major media. Finally, the Petitioner submitted evidence that that his current employer, [redacted] distributed a press release regarding its upcoming presentation of research at the [redacted] 2018 [redacted] Breast Cancer Symposium, which appeared on the websites of local network television affiliates, an AM radio station, and LaboratoryNetwork.com. The article mentions the Petitioner's name as the co-author of the presentation, but the press release is not about the Petitioner, nor is it accompanied by evidence that a press release circulated through these channels constitutes "major media."

Because the Petitioner has demonstrated that he satisfies three criteria, we will evaluate the totality of the evidence in the context of the final merits determination below.<sup>1</sup>

## B. Final Merits Determination

As the Petitioner submitted the requisite initial evidence, we will evaluate whether he has demonstrated, by a preponderance of the evidence, that he has enjoyed sustained national or

---

<sup>1</sup> As noted, on appeal the Petitioner also references the criteria relating to original contributions of major significance and performing in a leading or critical role at 8 C.F.R. 204.5(h)(3)(v) and (viii). We will consider the evidence relating to these criteria in our final merits determination as we assess whether the Petitioner has sustained national or international acclaim and has risen to the very top of his field.

international acclaim,<sup>2</sup> that he 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, the Petitioner has not demonstrated his eligibility.

The Petitioner submitted documentary evidence reflecting his academic and employment history. Specifically, the Petitioner received his bachelor's degree in chemistry from [redacted] University in 2000 and his master's degree in organic chemistry at [redacted] University in 2003. In 2011, he received his doctorate degree in chemistry from [redacted], where he also served as a graduate research fellow from 2005 until 2011. He has since worked as a senior scientist at [redacted] from 2011 until December 2015, and as a lead scientist at [redacted] from December 2015 until December 2017.<sup>3</sup>

As mentioned above, the Petitioner established that he has authored scholarly articles and judged the work of others in his field, and he provided evidence of published material about him and his work in the field. The record, however, does not demonstrate that his achievements are reflective of a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990).

As it pertains to the Petitioner's service as a judge of the work of others in the field, an evaluation of the significance of his experience is appropriate to determine if such evidence is indicative of the extraordinary ability required for this highly restrictive classification. See *Kazarian*, 596 F. 3d at 1121-22.<sup>4</sup> The Petitioner provided evidence showing that he acted as a peer reviewer for the journals *Langmuir* and *Lab on a Chip*, in 2013 and 2015, respectively.<sup>5</sup> The Petitioner also provided evidence that he served on the 30-member editorial board for the [redacted] beginning in 2015, which is described as an "open access journal" published by [redacted] a "self-supporting, freelance organization" not connected with any institution, university, or society.

In addition, the Petitioner submitted evidence that he had been selected to represent Sigma Xi as a Special Award Judge at the 2017 [redacted]. He also submitted evidence that he was invited by the chair of the [redacted] section of the [redacted] to serve as a member of the committee that reviews applications for [redacted] Senior Member elevation. Finally, the Petitioner provided evidence that,

<sup>2</sup> See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 14 (stating that such acclaim must be maintained and providing *Black's Law Dictionary's* definition of "sustain" as to support or maintain, especially over a long period of time, and to persist in making an effort over a long period of time).

<sup>3</sup> The Petitioner was not employed at the time of filing in February 2018, but the record reflects that he accepted a position as director of research and technology with [redacted] in May 2018.

<sup>4</sup> See also USCIS Policy Memorandum PM 602-0005.1, *supra*, at 13 (stating that an individual's participation should be evaluated to determine whether it was indicative of being one of that small percentage who have risen to the very top of the field of endeavor and enjoying sustained national or international acclaim).

<sup>5</sup> The Petitioner submitted letters from the journals' publishers confirming his services as a peer reviewer. At the time the letters were written in 2016, the Petitioner had reviewed one manuscript for each journal.

subsequent to the filing of the petition, he was named as a guest editor for an issue of the journal *Nanobiomedicine* and was invited to review manuscripts for the journals *Analytical and Bioanalytical Chemistry*, *Cancer Epidemiology, Biomarkers & Prevention*, *Clinical Cancer Research*, and *Molecules*.

Here, the Petitioner did not establish how the judging experience he had accrued at the time of filing places him among the small percentage at the very top of his field. See 8 C.F.R. § 204.5(h)(2). He did not demonstrate, for example, how this judging experience compares to others in the field, or how either the quality or quantity of the reviews he conducted stands out from his peers. While his editorial board position is noted, the Petitioner did not submit evidence to establish that the *Journal of Biosensors, Biomarkers and Diagnostics* is considered a highly ranked, prestigious journal in his field, or that his service on the board is otherwise indicative of national or international acclaim. In addition, the record reflects that the Petitioner's review requests occurred between 2013 and 2018. The Petitioner did not establish that his judging experience over a five-year period contributes to a finding that he has a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723 at 59.

In addition, while the [ ] is an internationally recognized science competition, its participants are high school students and the Petitioner did not establish how his selection as a special award judge for this event is indicative of his placement at the very top of his field, particularly as the evidence shows that judges were volunteers from Sigma Xi. Finally, concerning the Petitioner's invitation to join the member elevation committee for his local section of the [ ] we note that the record does not contain sufficient information regarding the criteria used to select committee members. The invitation letter addressed to the Petitioner suggests that the only criteria may be holding the grade of Senior Member himself. For example, the letter states "[s]ince you are a Senior Member of [ ] . . . you are invited to the committee." Serving on a judging committee or in the peer review process does not automatically demonstrate that an individual has extraordinary ability and sustained national or international acclaim.

Likewise, publication of a petitioner's scientific research alone does not place one at the top of the field. Here, the Petitioner provided evidence that he authored seven peer reviewed articles that appeared in professional journals between 2004 and 2017. The Petitioner claims that four of his articles were published in journals with rankings in the top ten in their respective fields, including *Journal of the American Chemical Society*, *Analytical Chemistry*, *Langmuir*, and *Journal of Materials Chemistry B*. This claim appears to be based on data compiled by Thomson Reuters' Web of Science, Google Scholar and from "Impact Factor" data provided by the journals' own websites. The fact that a publication bears a high ranking or impact factor is reflective of the publication's overall citation rate and other data. It does not, however, demonstrate the influence of any particular article published in that journal or how a particular author's research has had an impact within the field. While publishing articles in these journals is noteworthy, the Petitioner did not demonstrate that his overall publication record including these articles is tantamount to a career of acclaimed work or that it demonstrates the required sustained national or international acclaim for this highly restrictive classification. See H.R. Rep. No. at 59; section 203(b)(1)(A) of the Act.

As authoring scholarly articles is often inherent to the work of scientists and researchers, the citation history or other evidence of the influence of an individual's articles can be an indicator to determine the impact and recognition that their work has had on the field and whether such influence has been sustained. For example, numerous independent citations for an article authored by the Petitioner may provide solid evidence that his work has been recognized and that other researchers have been influenced by his work. Such an analysis at the final merits determination stage is appropriate pursuant to *Kazarian*, 596 F. 3d at 1122. In response to the Director's RFE, the Petitioner provided evidence of the number of citations to his published research. While the Petitioner's citations, both individually and collectively, show that the field has noticed his work, he did not establish that either the quantity or rate of citation to his papers are sufficient to demonstrate a level of interest in his field commensurate with sustained national or international acclaim. See section 203(b)(1)(A) of the Act.

The Petitioner submits several new reference letters on appeal which comment on his citation record. For example, [redacted] of the University of [redacted] states that the Petitioner's citation history demonstrates "widespread international interest" in his findings, and [redacted] of [redacted] states that the Petitioner's receipt of more than 60 citations represents "a significant total that evinces the continued application of his findings." In addition, [redacted] of [redacted] states that the Petitioner's published work "has been increasingly recognized in the international community" and expresses his belief that "citations to his work will undergo a drastic increase in the years to come." However, the record lacks evidence such as comparative data to support these assertions about the impact of the Petitioner's work, and speculation as to its future impact does not demonstrate sustained national or international acclaim.

The Petitioner provided evidence that he was one of 43 winners for Outstanding Poster Presentation at [redacted] the International [redacted] held in 2010. As noted, he provided evidence that *Chemical & Engineering News* provided coverage of the student poster competition, in which the Petitioner is named as one of the 43 winners. Although this evidence shows that notice of the competition and awards reached beyond that of the awarding event and recognized the research he performed during his graduate studies at [redacted], the article did not single out the Petitioner for acclaim apart from the other 42 winners. In addition, we note that only university students were eligible to win an award in this competition, such that receipt of this award is not indicative of standing at the top of the field of biomedical technology.

The Petitioner also provided evidence that he was named "Outstanding Scientist for 2017" by the Executive Committee of the [redacted] for his work in the development of biomedical technology with a focus on [redacted]. The Chair of the [redacted] [redacted] states that the award "recognizes companies and researchers responsible for innovations, achievements, and novel technologies and products" and is chosen by a committee that reviews "significant research and achievements of various scientists/engineers in their disciplines." The evidence reflects that the potential pool of recipients for this award was likely limited to [redacted] members who belong to the [redacted] of the association and not a broader pool of scientists working in the Petitioner's field. While the Petitioner's two awards indicate that he has received notable recognition for his scientific research, they do not demonstrate his sustained national or international acclaim.

We have also considered evidence demonstrating that the Petitioner has been a Senior Member of the [redacted] since 2017. While the record indicates that only 10% of [redacted]'s members hold this membership grade, it also reveals that promotion to this status is based upon professional experience, not upon notable achievements or acclaim. By contrast, the submitted materials from [redacted] indicate that a higher grade, Fellow Member, “recognizes unusual distinction in the profession and is conferred only by the Board of Directors upon a person with an extraordinary record of accomplishments.” While the Petitioner’s status as a senior member in [redacted] reflects his career progression and professional success as a scientist, the record does not demonstrate that this membership is indicative of his placement among the small percentage who have risen to the very top of the field.

The Petitioner references his submission of letters from colleagues and other scientists and experts regarding his original contributions in his field.<sup>6</sup> The letters summarize the Petitioner’s research and personal achievements and broadly discuss the potential impact of his research in the fields of biomedical diagnostics for diseases and in vitro fertilization. However, they do not establish that his original contributions are already recognized as majorly significant within these fields, nor do they sufficiently support assertions that he is considered among that small percentage at the very top of his field of endeavor or how he has garnered sustained national or international acclaim.

For example, [redacted] of [redacted] states that the Petitioner’s team at [redacted] “have made significant advances in employing a completely novel approach to [redacted] using a combination of new surface chemistry [redacted] and [redacted].” He indicates that the Petitioner has since worked on “developing a commercial application of this [redacted] technology, which, in my professional opinion will have a major impact in [redacted] and [redacted].” [redacted] also observed that the Petitioner’s research published in *Analytical Chemistry*, demonstrated a methodology “proven to detect [redacted] with astonishing sensitivity” that “far surpasses competing technologies using [redacted].” He opines that the Petitioner’s work “stands to save lives and suffering” by allowing for earlier diagnosis of cancer and other diseases. However, the record does not support a finding that the Petitioner’s research findings published in 2010, while original, are already recognized as a contribution of major significance in the field.

The potential future impact of the Petitioner’s research is noted in several of the submitted letters. [redacted] of [redacted] University states that the Petitioner’s methodology is “the most effective and viable [redacted] option at this time” and notes that “it is simply a matter of making this technology commercially available in an affordable package.” Likewise, [redacted] of [redacted] National Laboratory states that the Petitioner’s “[redacted] approach has great potential to detect a wide range of disease markers in the bloodstream” and “will lead to incredibly accurate and powerful diagnostic possibilities.” [redacted] of the [redacted] at the University of [redacted] notes that his research team has implemented the Petitioner’s approach for the [redacted], and notes that the “with advances in [redacted], the prospects for commercial applications in [redacted] are now more promising than ever before.” In addition, [redacted] a vice president with [redacted], states that the Petitioner “has produced some of the most promising [redacted] [redacted] in recent years” and “holds tremendous potential for breakthrough scientific and

<sup>6</sup> Although we discuss a sampling of letters, we have reviewed and considered each one.

commercial applications.” [redacted] stated that the Petitioner’s work “stands to make a significant impact in several scientific fields including diagnostics and the biomedical industry.”

Overall, the letters recognize the originality, importance, and prospective benefit of the Petitioner’s work, but do not contain detailed information showing the unusual influence or high impact the Petitioner’s contributions have already had on the overall field. Further, while the letters summarize and praise the Petitioner’s research and original contributions, they do not demonstrate that he is among that small percentage at the very top of his field of endeavor or that he has sustained national or international acclaim. Instead, some of the authors make general assertions repeating the statute and regulations. For instance, [redacted] of [redacted] states that the Petitioner “is an extraordinary scientist . . . with a demonstrated record of extraordinary achievement, skill and international recognition.” Similarly, [redacted] a chief scientist at [redacted] states that “there is extensive documentation of his sustained international acclaim and recognition” and that “he is among the small percentage of researchers who have arisen to the very top of this scientific field.” Letters that repeat the regulatory language but do not sufficiently explain how an individual’s contributions have already influenced the field significantly are insufficient.<sup>7</sup> Repeating the language of the statute or regulations does not satisfy the petitioner’s burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff’d*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at \*5 (S.D.N.Y.).

These and other letters not specifically mentioned, as well as other evidence in the record, show that the Petitioner’s original work has added significant value to the pool of knowledge in his field and opened avenues for further [redacted] research. The evidence, however, is insufficient to confirm that the level of attention he has received reflects widespread commentary and acceptance of his work, or that the field of biomedical diagnostics has regarded his research as authoritative. The letters do not provide sufficient information and explanation, nor does the record include sufficient corroborating evidence, to show that the Petitioner is viewed by the overall field as being among that small percentage at the very top of the field of endeavor. While the Petitioner submitted evidence that he was interviewed by *American Scientist* regarding his work with [redacted] while employed by [redacted], this one published article does not reflect of his status as an individual who has garnered “sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation.” See section 203(b)(1)(A) of the Act.

Further, we acknowledge that the Petitioner submitted sample articles that cite his research as evidence that he has made original contributions of major significance in the field. A review of the sample articles, though, does not show the significance of the Petitioner’s research to the overall field beyond the authors who cited to his work. For instance, the Petitioner provided an article titled [redacted] [redacted] (*European Journal of NanoMedicine*), in which the authors cited to his 2010 *Analytical Chemistry* article.<sup>8</sup> However, the article does not distinguish or highlight the Petitioner’s written work from the other 85 cited papers. The Petitioner has not shown that citations to his published articles rises to a level of “major significance” consistent with the “original contributions of major significance criterion.” Therefore, the submitted letters and

<sup>7</sup> See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 14

<sup>8</sup> Although we discuss a sample article, we have reviewed and considered each one.



citation evidence do not show that the Petitioner has received widespread recognition for his achievements and is seen by the greater field as having a career of acclaimed work. See H.R. Rep. No. 101-723 at 59.

Finally, the Petitioner has not shown that he has held leading or critical roles with organizations that have resulted in sustained national or international acclaim. [redacted] the Petitioner's supervisor at [redacted] states that, as a result of the Petitioner's "critical role in [redacted] [redacted] was able to launch [redacted] based on his work" as a lead scientist. The Petitioner also offered letters from [redacted] who supervised the Petitioner's graduate research work at [redacted] and served as CEO of [redacted]. [redacted] notes that the Petitioner "was the key scientist [at [redacted] to design and develop [redacted] [redacted]" While the Petitioner was interviewed in *American Scientist* regarding his work at [redacted] and his professional accomplishments there and elsewhere are notable, the record does not show how his successes with these employers resulted in widespread acclaim in the broader field of endeavor beyond these organizations.

The record as a whole, including the evidence discussed above, does not establish the Petitioner's eligibility for the benefit sought. The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than those progressing toward the top. USCIS has long held that even athletes performing at the major league level do not automatically meet the statutory standards for classification as an individual of "extraordinary ability." *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.

### III. CONCLUSION

The Petitioner has not shown that he 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. Here, that burden has not been met.

**ORDER:** The appeal is dismissed.

Cite as *Matter of D-R-*, ID# 5169089 (AAO Oct. 29, 2019)