



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

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

MATTER OF N-B-

DATE: SEPT. 30, 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a research engineer working in the field of chemical engineering, seeks classification as an alien 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 record did not establish, as required, that the Petitioner has received a major, internationally recognized award or met the requirements of at least three of the ten evidentiary criteria listed at 8 C.F.R. § 204.5(h)(3)(i) – (x).

On appeal, the Petitioner submits additional evidence and asserts that in addition to the two evidentiary criteria that the Director found he met, he meets an additional four criteria, and has sustained national or international acclaim.

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 a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the recognition of his or her achievements in the field through 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 sufficient qualifying 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 Petitioner is currently employed as a research engineer in the [redacted] industry. He obtained his Ph.D. in chemical engineering in 2013, focusing his research in the area of [redacted].

In his decision, the Director found that the Petitioner met two of the evidentiary criteria, those relating to his authorship of scholarly articles and his service as a judge of the work of others in his field. On appeal, he asserts that he also meets an additional four criteria. After reviewing all of the evidence in the record, we find that he does not meet the initial evidence requirement of at least three criteria.

### A. Evidentiary Criteria

*Documentation of the alien’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 evidence indicates that the Petitioner is a member of the [redacted] [redacted] and serves as one of six directors for the organization’s Northern California local section, which is its fifth largest in the world. In response to the Director’s request for evidence (RFE), the Petitioner submitted a letter from [redacted] who states that he is a Fellow with [redacted] a membership level which he states “recognizes long-term excellence in both professional accomplishments and

service to the profession.” He also verifies the Petitioner’s membership on the Executive Leadership Committee for [redacted] Northern California section, and indicates that the general requirements for this position include nomination by a selection committee “which selects candidates based on background and expertise in chemical engineering and any volunteering experience,” followed by an election by all members. [redacted] adds that candidates who will be symposium chairs, a role which the Petitioner has served in, “are required to have additional qualifications on being well-reputed among the academia and industry peers...” On review, the letter indicates that nomination is based upon background and volunteering experience, not outstanding achievements, and that the final selection is made by vote of all of the members versus recognized national or international experts.

On appeal, the Petitioner submits the [redacted] Northern California section’s bylaws. Article III lists the four membership classes, but defers to the national or “home office” requirements for each class without further details. In addition, in explaining the nomination process for the executive committee, Article V indicates that “qualified” candidates should be selected, but does not explain what the qualifications for committee membership are, stating only that student members are not eligible. Therefore, neither the bylaws nor [redacted]’s letter establish that the Petitioner’s membership on the [redacted] Northern California section executive committee requires outstanding achievements or is judged by recognized national or international experts. This criterion has not been met.

*Evidence of the alien’s participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specialization for which classification is sought. 8 C.F.R. § 204.5(h)(3)(iv)*

The Petitioner submitted evidence that he served as a chair for a one day symposium presented by the [redacted] Northern California chapter, co-chaired sessions at the 2016 and 2017 [redacted] annual meetings, a [redacted] meeting, and the 2017 [redacted] [redacted] and reviewed undergraduate and graduate students awards submissions. In addition, he served as a peer reviewer for three papers submitted to the *Journal of Membrane Science*, and reviewed a research proposal for the University of [redacted] Research Board. Accordingly, we agree with the Director that this criterion has been met.

*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)*

In order to satisfy the regulation at 8 C.F.R. § 204.5(h)(3)(v), a petitioner must establish that not only has he made original contributions, but that they have been of major significance in the field. For example, a petitioner may show that the contributions have been widely implemented throughout the field, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance.

The Director noted in his decision that the number of citations of the Petitioner’s published research was far fewer than other researchers in the field, and compared it to the number of citations to the work of [redacted] who authored a reference letter submitted with this petition. On appeal, the Petitioner asserts that this comparison does not take [redacted] long career into account, and instead argues that the number of citations in his first six years as a researcher should be compared to the

Petitioner's. However, while the Petitioner's overall citation history is a relevant consideration in a final merits determination, neither comparison is particularly useful as an indicator of whether he has made original contributions of major significance to the field of chemical engineering as a whole. We note that the record does not include more relevant, contemporary comparative data to aid in the determination of whether the number of citations to the Petitioner's published research is indicative of impact or influence in the field.

The Petitioner identifies as the most important of his original contributions his research on the "V-treatment" technique he developed for [redacted] which was published in the journal *Carbon* and led to a granted patent. A reference letter from [redacted] of the [redacted] Institute of Technology [redacted]), under whose supervision the Petitioner worked during his graduate research, states that this technique increases the performance of [redacted] resulting in lower cost and environmental impact in commercial settings.<sup>1</sup> He also notes that his group at [redacted] built upon the Petitioner's work, leading to a patent assigned to the United States Department of Energy on which the Petitioner is not named as an inventor. In a second letter submitted in response to the Director's request for evidence (RFE), [redacted] writes that his research group continues to pursue commercialization of the V-treatment process, with the expectation of successful field tests. While these letters demonstrate that the Petitioner's research has been important to [redacted]'s research group, they do not establish that it has already been of major significance to the overall area of [redacted] technology.

[redacted] CTO at [redacted] also submitted a reference letter, noting that he first met the Petitioner at [redacted] [redacted] also endorses the Petitioner's V-treatment technique, writing that it "could help apply [redacted] on an industrial scale," and states that other companies, including his employer, "have leveraged [the Petitioner's] original work in their patent research." However, he does not provide specifics on how others have implemented the Petitioner's work, and like [redacted] indicates that the industrial implementation of his invention is yet to occur.

Another expert who writes about the Petitioner's V-treatment process is [redacted]. He states in his letter that it "offers a solution to one of the field's major challenges," and that "the quality and number of citations the article has received in a short amount of time" shows the *Carbon* article's influence on the field. However, the record lacks supporting evidence of the quality of the citations, as well as comparative evidence showing that the rate of citation to this article is indicative of remarkable influence on other researchers in the field.

The record also includes evidence of the four granted patents listing the Petitioner as an inventor, as well as six patent applications filed in 2018 that are currently pending. Two of the granted patents relate to the Petitioner's V-treatment process, discussed above. [redacted] the Petitioner's technical supervisor with his current employer, describes his work on the company's [redacted] [redacted] project which led to another of the patents, and indicates that it "will be key on further development of the [redacted] technology." Although [redacted]'s letter shows that the Petitioner has had an influence on this and other research projects for his employer, it does not demonstrate that this work has already been of major significance to the overall field.

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<sup>1</sup> While all of the reference letters in the record have been thoroughly reviewed, not all will be mentioned in this decision.

In summary, the evidence described above, as well as other evidence not specifically mentioned, shows that the Petitioner has made important contributions to [redacted]'s research group at [redacted] as well as to his current employer. But it does not establish that his original contributions have been of major significance to the overall field of chemical engineering, or the more specialized area of [redacted] technology. Accordingly, this criterion has not been met.

*Evidence of the alien'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 record includes evidence which establishes that as of the date he filed his petition, the Petitioner had authored two scholarly articles which had been published in scientific journals, and has since authored an additional two published articles. As such, it establishes that he has met this criterion.<sup>2</sup>

*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)*

In order to qualify under this criterion, a leading role should be apparent by its position in the overall organizational hierarchy and through the role's matching duties. On the other hand, a critical role may be shown by evidence of a petitioner's impact on the organization or the establishment's activities. A petitioner's performance in this role should establish whether the role was critical for the organization or establishment as a whole.

Here, the Petitioner focuses on his roles with [redacted] Research Group at [redacted] as well as in his current position with [redacted] and points to reference letters describing his role in each of those organizations. [redacted] writes in his reference letter that as a Ph.D. candidate in his group, the Petitioner developed the V-treatment procedure which significantly improves the performance [redacted] and allows them to be scaled up for commercial use. He notes that this research contribution "changed the direction of our future studies in the advancement and commercialization of [redacted] technology," and concludes that the Petitioner "blazed a path for my group at [redacted]." In a second letter, [redacted] expands upon this, stating that roughly 60% of the work now conducted by his research group "follow along the path that [the Petitioner] has opened up with his research." However, we note that these letters indicate that the criticality of the Petitioner's work did not become evident until after his departure, and do not establish that his role as a graduate student researcher was critical while he was a member of the group.

In addition, even if the evidence were to establish that the Petitioner played a critical role for [redacted]'s research group, it does not demonstrate that the research group has a distinguished reputation. The Petitioner submitted evidence that the graduate chemical engineering department at [redacted] was ranked sixth (tied with at least four other departments) by *U.S. News & World Report*, but [redacted] does not claim in his letters that the Petitioner's role was critical for the overall department. Further, while [redacted]'s biography listed in [redacted]'s faculty directory webpage indicates that

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<sup>2</sup> We note that while the Petitioner's curriculum vitae indicated that he had also authored several abstracts which had been presented at scientific conferences, the record does not include evidence to show that the abstracts were published.

his group “is a leader” in the field, this statement is not corroborated with independent documentary evidence of the group’s reputation.

Regarding the Petitioner’s current role with [redacted] he references two letters from current and former colleagues. [redacted] who co-authored a patent application with the Petitioner, also notes that they collaborated on two conference presentations which “demonstrated [redacted]’s proprietary [redacted] technology before the international [redacted] community and were crucial to garnering the interest of potential [redacted] developers.” While [redacted] concludes that the Petitioner “has served in a critical capacity for [redacted],” he does not explain the impact of the patent or the presentations in terms of their effect on [redacted] overall operations, finances or research.

The second letter regarding the Petitioner’s critical role with his current employer was written by [redacted] [redacted] He states that the Petitioner was the technical lead on [redacted] [redacted] research projects. The Petitioner’s role in spearheading the experimental design and commercialization of the [redacted] project led to a patent application and further funding for its development, and [redacted] states that the [redacted] “is expected to increase revenue by \$30-\$40 million/year.” He also writes that the Petitioner was “a key contributor to the [redacted] project,” and was the project manager for a water desalination project. [redacted] concludes by noting that the Petitioner has received over a dozen internal performance awards for this and other contributions to [redacted]’s research and development programs. As with [redacted] letter, however, this evidence demonstrates that the Petitioner has made contributions to his employer through several research projects, but does not establish this work made a critical impact on its overall operations. Further, while the record includes evidence which indicates that [redacted] is the [redacted] company in the United States, the evidence regarding its [redacted] subsidiary does not establish that it enjoys a distinguished reputation.

For all of the reasons given above, the Petitioner has not established that he meets this criterion.

*Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field. 8 C.F.R. § 204.5(H)(3)(ix)*

As evidence of his salary, the Petitioner submitted his 2016 and 2017 IRS Form W-2s, which show that he earned approximately \$107,000 and \$112,000 in those years, respectively. In addition, a letter from his current employer states that his base salary for 2018 was \$122,000. In support of the level of his salary in relation to others in his field, he submitted two salary reports from the website of the Foreign Labor Certification (FLC) Data Center, which shows the salaries for chemical engineers in the [redacted] California metropolitan area for 2017 and 2018. He also submitted the [redacted] *Global Salary Guide* from recruiting company Hays for 2016. The Director concluded that this evidence does not show that the Petitioner “is among the highest paid research engineers in the United States.”

On appeal, the Petitioner asserts that the Director applied an incorrect evidentiary standard, as the language does not require that the Petitioner’s salary be among the highest, but that it be relatively high. We agree. However, we do not agree with the Petitioner’s interpretation of the FLC data. On

appeal, he asserts that since this was his first job since obtaining his Ph.D. in 2013, his wage should be compared to that of entry level chemical engineers at the level 1 wage. As noted on the salary data reports in the record, qualifying education and training for the referenced position consists of a bachelor's degree. The Petitioner's doctorate degree places him well above these minimum qualifications, and well above the trainee or intern level appropriate for a level 1 wage.<sup>3</sup> At the more applicable level 3 wage, which includes positions requiring "years of experience or educational degrees that are at the higher ranges,"<sup>4</sup> the evidence shows that the Petitioner's salary for 2016 and 2017 was below average, and only slightly above average for 2018.

In addition, we do not find that the Hays report includes data which is sufficient to form a basis for comparison to the Petitioner's salary. Specifically, none of the job titles included appear to be research positions, nor is there any description of the duties of these positions, and the data does not account for local variations in salary. Accordingly, after comparison of the Petitioner's salary with the relevant data in the record, the evidence does not establish that the Petitioner meets this criterion.

#### B. O-1 Nonimmigrant Status

We note that the record reflects that the Petitioner received O-1 status, a classification reserved for nonimmigrants of extraordinary ability. Although USCIS has approved at least one O-1 nonimmigrant visa petition filed on behalf of the Petitioner, the prior approval does not preclude USCIS from denying an immigrant visa petition which is adjudicated based on a different standard - statute, regulations, and case law. Many Form I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. See, e.g., *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *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). Furthermore, our authority over the USCIS service centers, the office adjudicating the nonimmigrant visa petition, is comparable to the relationship between a court of appeals and a district court. Even if a service center director has approved a nonimmigrant petition on behalf of an individual, we are not bound to follow that finding in the adjudication of another immigration petition. *Louisiana Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, at \*2 (E.D. La. 2000).

### III. CONCLUSION

The evidence does not establish that the Petitioner received a major, internationally recognized award or meets three of the ten evidentiary criteria. As a result, we need not provide the type of final merits analysis determination referenced in *Kazarian*, 596 F.3d at 1119-20. Nevertheless, we advise that we have reviewed the record in its entirety, and conclude that it does not support a finding that the Petitioner has established the level of sustained acclaim and standing in his field required for the classification sought. For these reasons, the Petitioner has not shown that he qualifies for classification as an individual of extraordinary ability.

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<sup>3</sup> See *Prevailing Wage Determination Policy Guidance* at 6 for a detailed explanation of the four skill levels, accessed on the FLC Data Center website at [https://flcdatacenter.com/download/NPWHC\\_Guidance\\_Revised\\_11\\_2009.pdf](https://flcdatacenter.com/download/NPWHC_Guidance_Revised_11_2009.pdf).

<sup>4</sup> *Id.*

*Matter of N-B-*

The appeal will 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.

**ORDER:** The appeal is dismissed.

Cite as *Matter of N-B-*, ID# 4420324 (AAO Sept. 30, 2019)