



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

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

In Re: 6016073

Date: APR. 23, 2020

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Extraordinary Ability)

The Petitioner, a molecular biochemist, 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 petition, 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 asserts that the Director failed to apply the preponderance of the evidence standard to the facts presented. He maintains that he meets three of the initial evidentiary criteria and is otherwise qualified for the benefit sought.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

**I. LAW**

Section 203(b)(1) 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).

## II. ANALYSIS

At the time of filing, the Petitioner was employed as a post-doctoral researcher in the department of biology at [redacted] University.<sup>1</sup> He received his bachelor’s degree in chemistry from [redacted] College, his master’s degree in biochemical technology at [redacted] University, and his doctor of philosophy degree in biochemistry at [redacted] The State University of [redacted]

### 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). The Director found that the Petitioner met only two of the initial evidentiary criteria, judging 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).

The record reflects that the Petitioner has peer reviewed manuscripts for scientific journals including *Cellular & Molecular Biology*, *International Journal of Life-Sciences Scientific Research*, *Bioscience Reports*, and *Cell Biochemistry and Biophysics*. He also provided evidence that he serves as an editorial board member for three journals, including *Journal of Biology and Life Science*, and *Frontiers in Physics, Physiology and Molecular Biosciences*. In addition, the Petitioner has submitted evidence that he authored scholarly articles published in several scientific journals including *Science* and *Molecular Cell*. Accordingly, we agree with the Director that the Petitioner fulfilled the judging and scholarly articles criteria.

On appeal, the Petitioner maintains that he meets one additional criterion, discussed below. We have reviewed all of the evidence in the record and conclude that the Petitioner has not established that he satisfies the requirements of at least three criteria.

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<sup>1</sup> The record reflects that he received a promotion to the position of Basic Life Research Scientist soon after filing the petition in March 2018. Subsequently, the Petitioner accepted a position as a “Senior Scientist 1, [redacted] with [redacted]

*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).

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 in the field.

The Petitioner claimed in his initial cover letter that he has made five original contributions of major significance in the field, as evidenced by his published research, citation record, letters from experts in the field, and other evidence. Specifically, he highlighted the following areas of research: (1) investigation of the mechanism of transcription involving the [redacted]; (2) identification of the mechanism by which anti-bacterial agents disable the [redacted] [redacted] (3) development of an [redacted] labeling technology; (4) investigation of the mechanism of transcription [redacted] and transcription [redacted]; and (5) development of a novel assay that permits combined [redacted] and [redacted] of transcription.

Although the Petitioner provided evidence reflecting the originality of his research through recommendation letters praising him for his contributions, the authors do not provide specific examples of contributions that are indicative of major significance. In general, the letters recount the Petitioner's research and findings, indicate their publications in journals, point to the citation of his work by others, and comment on their potential and possible future applications, but do not demonstrate that his research have made the required impact in the field.

[redacted] of [redacted] University describes the Petitioner's work on [redacted] transcription mechanisms as "particularly enlightening," noting that he obtained "the first definitive information about how the [redacted] to facilitate transcription." [redacted] notes that transcription is "universal to all life forms" so "increasing our understanding of how it occurs has "far reaching implications." [redacted] of the [redacted] Laboratory also notes that transcription is a "universal process" and states that disruptions in transcription are associated with many diseases." He indicates that the insights provided by the Petitioner's research "provide valuable information for researchers to develop new therapeutic treatments by targeting [redacted] activities." He does not explain how other researchers have used this information to date, nor does the record show that therapeutic treatments have been derived from this particular research. [redacted] of University of [redacted] echoes [redacted]'s statements regarding the "far-reaching implications" of this research and states that he was inspired to publish a review "elaborating on its importance." However, he does not further explain the importance of the discovery, what its "far-reaching" implications are, or its specific impact on the field, nor does the record contain a copy of the review that he authored.

[redacted] formerly a principal scientist at [redacted] discusses the Petitioner's analysis of the biological mechanisms relevant to the [redacted] of [redacted]. He notes that the Petitioner investigated the behavior of three natural products (abbreviated [redacted]) that were known to selectively bind to this [redacted] and to exhibit antibacterial activity. [redacted]

[redacted] explains that the Petitioner investigated the behavior of these [redacted] inhibitors and found that they each caused the [redacted] to lock in a closed position, thus preventing transcription from taking place. He explains that the Petitioner's research "provided a valuable foundation for further research and development of antimicrobial agents." He mentions two other research groups who had used the Petitioner's findings to develop new [redacted] drugs with antibacterial activity, describing them as "noteworthy pharmaceutical developments." [redacted] notes that the Petitioner's research in this area aids further investigation into "alternatives to current antibacterial drugs that target [redacted]," noting that it has "directly resulted in multiple endeavors to bring new antibacterials to the marketplace, offering new treatment options for many diseases including tuberculosis." Similarly, [redacted] states that the Petitioner's findings are "highly relevant to the development of new antibiotics" that may help fight bacterial strains that have grown resistant to existing options. He confirms that there have been "a host of projects aimed at developing new [redacted]," noting that the Petitioner's work has been applied in "direct and consequential ways."

While the record indicates that other researchers in academia and in the pharmaceutical industry have built upon the Petitioner's research, the evidence does not establish that the field views the Petitioner's work as a contribution of major significance. Nor does it demonstrate that it has resulted in new antibiotic drugs that are available in the marketplace; rather, it appears that that such an impact remains prospective in nature. For example, [redacted] of University of [redacted] states that "[redacted] published papers expressing interest in developing drugs to target the [redacted] region."

Several of the submitted expert opinion letters comment on the Petitioner's design of an [redacted] [redacted] labeling technology. [redacted] of [redacted] University states that the Petitioner "has received considerable attention for developing a technology to attach [redacted] probes for single-molecule studies using a [redacted]," and notes that "many researchers are employing this tool to study various proteins with a level and degree of accuracy never achieved before." [redacted] also comments on the Petitioner's technological advance, noting that "[s]uccessful biochemical research . . . demands that the scientist develop customized instruments and techniques to do things that have never been done before." He explains that the "scope of applicability for this method is vast and includes virtually any study involving protein structure or function." The submitted letters do not explain how the novel technique has been widely implemented or how it has been regarded by the field as a contribution of major significance. Rather, [redacted]'s statement suggests that it is common for biochemical researchers to develop new techniques in order to carry out their research.

The above-referenced letter from [redacted] also addresses the Petitioner's investigation of transcription [redacted] and transcription [redacted]. He explains that [redacted]'s "location and role in unwinding DNA was poorly understood prior to [the Petitioner's] investigation," and notes that the Petitioner "produced the first evidence of an [redacted] relationship between the two factors . . . during the transcription process." [redacted] indicates that the functionality of [redacted] is "of major interest to researchers studying topics including cancer and birth defects." [redacted] a research associate at [redacted] University, describes the Petitioner's research in this area as "influential" and describes the work of a team of researchers that "profited from [the Petitioner's] insights into the nature of [redacted] activity." These letters do not sufficiently detail in what ways the Petitioner has

advanced the state of research in his field or elaborated on how the Petitioner's work has already impacted the wider field beyond the teams of researchers who have directly cited his article on this topic.

Finally, [redacted]'s letter discusses the Petitioner's development of a [redacted] assay that permits combined [redacted] and [redacted] of the transcription process. He states that the techniques the Petitioner developed to carry out this project "place him at the vanguard of biochemical and biophysical researchers" and notes that very few laboratories worldwide have been able to successfully employ such an approach. With respect to the impact of the research, [redacted] notes that [a]berrations in gene expression are at the core of many of the most vexing problems in medicine" and states that the Petitioner "is building the framework to understand and eventually treat these conditions in radically new ways." However, he does not discuss in detail how the Petitioner's work has already remarkably impacted their shared field or provide examples of specific applications attributed to the Petitioner's work in this area.

The letters considered above primarily contain attestations of the novelty and utility of the Petitioner's research studies without providing specific examples of contributions that rise to a level consistent with major significance. Letters that specifically articulate how a petitioner's contributions are of major significance to the field and its impact on subsequent work add value.<sup>2</sup> Letters that lack specifics and use hyperbolic language do not add value, and are not considered to be probative evidence that may form the basis for meeting this criterion.<sup>3</sup> The authors' assertions in the above-referenced letters do not explain how the Petitioner's research findings have been widely implemented in the field or not establish that the Petitioner's work has had a demonstrable impact on the field as a whole commensurate with a contribution of major significance.

The Petitioner also submits his publication and citation record from Google Scholar. But this evidence not show that the impact of his work on the overall field of molecular biochemistry rises to the level of an original contribution of major significance. 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." Rather, the appropriate analysis is to determine whether a petitioner has shown that his findings, factoring in citations and other corroborating evidence, have been considered important at a level consistent with original contributions of major significance in the field. We acknowledge, however, that a petitioner may present evidence that his articles "have provoked widespread commentary or received notice from others working in the field, or entries (particularly a goodly number) in a citation index which cite [his] work as authoritative in the field, may be probative of the significance of [his] contributions to the field of endeavor."<sup>4</sup>

Here, the Petitioner submitted evidence from Clarivate Analytics showing that three of the articles he published were ranked among the top 10% in citations when grouped by academic field (in this case, molecular biology and genetics) and year of publication. He also submitted a paper published in the journal *Scientometrics* which suggests that this metric is one of three that should be used to evaluate

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<sup>2</sup> See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8-9.

<sup>3</sup> *Id.* at 9.

<sup>4</sup> *Id.* at 8.

individual researchers in the natural and life sciences for purposes of funding and promotion or hiring decisions. The authors state that “publications which are among the 10% most cited publications in their subject area are as a rule called highly cited or excellent” and that “the top 10% based excellence indicator” should be given “the highest weight when comparing the scientific performance of single researchers.” However, this evidence does not establish that metrics that may be suitable for comparing applicants for academic research positions and grants are indicators that a researcher has made contributions of major significance to his or her field.<sup>5</sup>

Comparative rankings to baseline or average citation rates do not automatically establish that a given petitioner has made a contribution of major significance in the field.<sup>6</sup> A more appropriate analysis, for example, would be to compare the Petitioner’s citations for individual articles to other similarly, highly cited articles that the field views as having been of major significance, as well as factoring in other corroborating evidence. Highly cited publications alone are not sufficient under 8 C.F.R. § 204.5(h)(3)(v) absent evidence that they were of “major significance” as a citation ranking does not provide sufficient context to determine the impact or importance of a given researcher’s work in the field. We also acknowledge that the Petitioner provided evidence that two of his articles were published in journals with high rankings based on their impact factor. However, a publication’s high ranking or impact is reflective of the publication’s overall citation rate. It does not demonstrate the influence of any particular author within the field, how an author’s research impacted the field, or establish a contribution of major significance in the field. That context must be provided by other evidence in the record.

The Petitioner has not demonstrated, as he asserts, any of the three articles he characterizes as highly cited resulted in an original contribution of major significance in the field. While the Petitioner submitted corroborating evidence in the form of expert opinion letters, that evidence, for the reasons already discussed, is not sufficient to establish that any of the Petitioner’s research findings, individually or collectively, have remarkably impacted or influenced his field.

Further, the record indicates that the Petitioner submitted samples of research articles that cited to his work. A review of those 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 a partial copy of an article entitled, [REDACTED]

[REDACTED] (*Molecular Cell*), in which the Petitioner highlighted two sentences that cite to his 2012 *Science* article.<sup>7</sup> However, the article does not distinguish or highlight the Petitioner’s written work from the other cited papers, of which there are more than 50. The submitted research articles reference the Petitioner’s work as evidence of recent research, and, while the articles indicate that the authors’ own research built upon the Petitioner’s

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<sup>5</sup> Further, we note that evidence that summarizes citations to the Petitioner’s entire body of published work do not demonstrate that any specific work of his is so widely cited and relied upon that it is considered to have made a major impact in his field. Comparison of the Petitioner’s cumulative citations to others in the field is often more appropriate in determining whether the record shows sustained national or international acclaim and demonstrates that he is among the small percentage at the very top of the field of endeavor in a final merits determination.

<sup>6</sup> For instance, according to the data from Clarivate Analytics, chemistry papers published in 2017 receiving only seven citations and in 2018 receiving only two citations are in the top 10%. The Petitioner has not demonstrated that papers with such citation counts have necessarily had a major, significant impact or influence in the field as evidenced by being among the top 10% of most highly cited articles according to year of publication.

<sup>7</sup> Although we discuss a sample article, we have reviewed and considered each one.

work, as well as the work of the other cited scientists, the Petitioner not demonstrate that the overall field views his published findings as original contributions of major significance.

The Petitioner also emphasizes that his publications have been cited in several review articles, and submits a screenshot of a page from the website of the University of Texas Libraries titled “What’s a ‘Review Article?’” The Petitioner states that inclusion in review articles shows that his work “has been widely upheld as a benchmark for further study in molecular biology.” The evidence indicates that review articles are “an attempt to . . . sum up the current state of the research on a particular topic” and may identify “the main people working in a field” and “recent major advances and discoveries.”

One of the submitted review articles, titled [REDACTED] [REDACTED] (*Microbiology and Molecular Biology Reviews*), cites to the Petitioner’s 2012 *Science* article and 2011 *Current Opinions in Microbiology* article among at least 155 other articles. While the evidence indicates that the Petitioner has made original contributions to what appears to be an active field of research, we cannot determine that every publication cited in a review article is indicative of majorly significant.

In addition, the Petitioner maintains that a mention of his 2012 *Science* article published by the [REDACTED] provides evidence of the significance of the his research findings. The article, which was published on the “News” portal on [REDACTED]’s website, credits the Petitioner and his team with explaining the mechanisms of action for the natural antibacterial substances discovered by [REDACTED] scientists. The article discusses [REDACTED]’s ongoing research in this area and speculates on the prospective potential impact of that research. For example, the article quotes [REDACTED] scientists who state that “[t]heir application in the fight against those bacteria that have evolved resistance to traditional antibiotics opens up a world of possibilities in terms of new drug design,” “[t]he substances cannot in their current form be used as drugs quite yet,” and “we have to first continue to fine-tune their integration into potential new drugs.” The article reports on how the Petitioner’s findings may impact the field at some point in the future but does not demonstrate that the current impact of his work rises to a level of “major significance” as required. Therefore, while the article reports on the Petitioner’s published article and its relationship to [REDACTED]’s original identification of the substances and [REDACTED]’s ongoing research, he did not demonstrate how his work already qualifies as a contribution of major significance in the field.

Finally, the Petitioner argues that his research has been funded by the National Institutes of Health (NIH) on multiple occasions and provides statistics relating to the competitiveness of securing grants. Receiving funding to conduct research is not a contribution of major significance in-and-of itself. Rather, the Petitioner must establish that receiving the grant is reflective of his past work’s major significance, or that his research conducted with the NIH grant resulted in a contribution of major significance in the field. The record contains two recommendation letters confirming that the Petitioner’s “contributions directly led to the obtainment of [NIH] funding.” The letters, however, do not sufficiently illustrate how the funding reflects the importance of the Petitioner’s contributions, nor do they indicate the research results of the NIH funding and whether they are majorly significant in the field.

Considered together, the evidence consisting of the citations to the Petitioner’s published findings, the citation statistics, and the reference letters from his fellow biochemists and other experts, establishes that the Petitioner has been productive, and that his published data and findings have been relied upon

by others in their own research. It does not demonstrate that the Petitioner has made a contribution of major significance in the field of biochemistry. Therefore, he has not met this criterion.

### III. CONCLUSION

The Petitioner has not submitted the required initial evidence of either a one-time achievement or documents that meet at least three of the ten criteria. As a result, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. Nevertheless, we advise that we have reviewed the record in the aggregate, concluding that it does not support a finding that the Petitioner has established the acclaim and recognition 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 his work is indicative of the required sustained national or international acclaim or that it is consistent with a “career of acclaimed work in the field” as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate that the Petitioner has garnered national or international acclaim in the field, and he is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2).

For the reasons discussed above, the Petitioner has not demonstrated his eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

**ORDER:** The appeal is dismissed.