



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

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

In Re: 6548942

Date: APR. 23, 2020

Appeal of Nebraska Service Center Decision

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

The Petitioner, a physicist, 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 record did not establish, as required, that the Petitioner had a qualifying one-time achievement or met at least three of the ten initial evidentiary criteria for this classification.

On appeal, the Petitioner asserts that the previously submitted evidence establishes 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

The Petitioner was employed as a Special Fellow/Medical Physics Resident in the [redacted] Clinic’s [redacted] Physics Program at the time he filed the petition.<sup>1</sup> He received his bachelor’s degree in physics at [redacted] University in 2009, his doctor of philosophy in physics from [redacted] University in 2014, and a [redacted] Accredited Certificate in [redacted] Physics from [redacted] University – [redacted] Clinic, in 2017. According to his résumé, the Petitioner has previously served as a research fellow at [redacted] Clinic and as a postdoctoral researcher at The [redacted] University.

### 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 Petitioner submitted evidence relating to three of the ten alternate regulatory criteria. The Director found that the Petitioner satisfied two of these criteria relating to judging the work of others in his field and authorship of scholarly articles.<sup>2</sup> *See* 8 C.F.R. § 204.5(h)(3)(iv) and (vi). However, the Director determined that the Petitioner’s evidence did not demonstrate that he satisfied the third claimed criterion, relating to original contributions of major significance in the field.

We have reviewed all of the evidence in the record and conclude that the Petitioner has not established that he meets this third criterion.

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<sup>1</sup> On appeal, the Petitioner indicates that he has accepted an Associate Professor position with [redacted] University with a start date of July 2019.

<sup>2</sup> The Petitioner provided evidence that he has peer reviewed manuscripts for several scientific journals, including *Nano Research*, *Physics Letters A*, *Nanotechnology*, and *Journal of Applied Physics*. Furthermore, the Petitioner submitted evidence that he has co-authored articles that were published in peer-reviewed scientific journals including *ACS Nano*, *Nano Letters*, *Nanotechnology*, *Physical Review Letters* and *Applied Physics Letters*, among others.

*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 his decision, the Director acknowledged the Petitioner's submission of expert opinion letters discussing his research, copies of his published articles along with information regarding the journals in which he was published, and evidence that he has been cited by other researchers in their own published work. However, the Director determined that the evidence did not substantiate the Petitioner's claim that he had made original scientific contributions of major significance. On appeal, the Petitioner asserts that the Director did not give sufficient consideration to the evidence submitted in support of this criterion or consider the evidence in its totality.

In order to meet this criterion, a petitioner must establish that not only has he made original contributions but that they have been of major significance in the field. 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 8-9* (Dec. 22, 2010), <https://www.uscis.gov/policymanual/HTML/PolicyManual.html> (stating that although funded and published work may be "original," this fact alone is not sufficient to establish that the work is of major significance). 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 identifies four original contributions that he claims have made an impact in the field of physics. Although the Petitioner provided expert opinion letters praising him for his research contributions, the authors, as discussed below, do not provide specific examples of original contributions that are indicative of major significance. In general, the letters recount the Petitioner's research and findings, indicate their publications in journals, and point to the citation of his work by others. Although they reflect the novelty of his work, they do not show how his research and findings have been considered of such importance and how their impact on the field rises to the level required by this criterion.

First, the Petitioner describes his work characterizing two-dimension (2D) metal-insulator transition in [redacted] 2D [redacted] systems, noting that he "discovered a new [redacted] phase between the [redacted] state and the [redacted] 2D metal-insulator transition" and "characterized the [redacted] properties of the [redacted] phase over extended temperature and density ranges." [redacted] of [redacted] University states that he himself "discovered the metal-insulator transition in [redacted] [2D] [redacted] system,"<sup>3</sup> and states that the Petitioner "made remarkable contributions to this research field by characterizing 2D holes in [redacted] using low-temperature electrical transport and thermoelectric measurements." He credits the Petitioner's research with solving "the long-standing puzzle of discrepancy between theory and experiment observations" and revealing "fundamental information on the [redacted] 2D [redacted] systems." [redacted] further describes the work as "far-reaching" and notes that he and others have cited it in their own published articles. Another letter, from [redacted] of the [redacted] University of [redacted], describes the Petitioner's studies as

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<sup>3</sup> [redacted] states that his discovery has been identified by the American Physical Society as one of the 50 main discoveries in [redacted] physics in the twentieth century.

“fundamental work” in this research area, states that she has performed experiments on 2D [redacted] systems that are closely related to his work, and notes that she highlighted and discussed the Petitioner’s studies in one of her own publications.

These letters confirm that the research conducted by the Petitioner built upon [redacted]’s discovery, and generated interest amongst other researchers, who were able to apply the Petitioner’s work to their own research. But it does not show that the impact of his work on the overall field of physics rises to the level of an original contribution of major significance. *See Visinscaia v. Beers*, 4 F. Supp. 3d 126, 134-35 (D.D.C. 2013); (upholding a finding that a ballroom dancer had not met this criterion because she did not corroborate her impact in the field as a whole). For example, while [redacted] describes the work as a “remarkable contribution” that is “far-reaching,” he does not discuss its specific impact or influence in the field beyond noting that it has been cited by others.

The Petitioner indicates that two of his original contributions relate to his study of [redacted] [redacted]. First, he explains that he “uncovered the [redacted] surface states in [redacted] and [redacted], which pioneered the study of [redacted] materials.” He also indicates that he “determined the thermoelectric properties of [redacted] and [redacted] [redacted], which was insightful for tailoring the electrical and thermal properties of [redacted]” [redacted], an assistant professor at [redacted] University, states that the Petitioner’s research in this area “offered valuable information on tailoring the [redacted] properties of [redacted]” and notes that his work with [redacted] “was constructive for subsequent studies on the characterization and utilization of [redacted].” [redacted] indicates that he has cited the Petitioner’s published papers in several of his own studies. While this evidence confirms that other researchers noted this work in their own published research, [redacted]’s letter does not provide sufficient specificity regarding the major significance of this research to support the Petitioner’s claim that he is recognized as having “pioneered the study of [redacted] [redacted] materials.” Rather, [redacted] describes the Petitioner’s research work as “valuable” and “constructive,” without further explaining how it has already impacted or influenced the field.

[redacted], a professor at University College [redacted] describes the Petitioner’s publications on [redacted] as “pioneering.” He states that “[t]he discovery of [redacted] states is the biggest breakthrough in the field of [redacted] Physics during the last decade.” [redacted] does not, however, appear to credit the Petitioner with this discovery. He states that the Petitioner’s study revealed “the possibility of exploiting [redacted] for room-temperature [redacted] applications” and “offered novel insights into tailoring the [redacted] properties of [redacted] for practical applications; hence, it has a long-lasting impact on [redacted].” While he generally notes the potential application of the Petitioner’s research, [redacted] does not explain how it has already significantly influenced or impacted their shared field.

Finally, the Petitioner states that he has synthesized “a novel type of [redacted] alloy for [redacted] harvesting, which can be used for waste heat recovery under high temperature.” [redacted]’s letter briefly addresses the Petitioner’s research in this area, noting that his synthesis method “improves the [redacted] power factor, and [redacted] figure of the materials.” He generally notes the significance of [redacted] alloys, noting they possess properties that

indicate their potential use in combustion engine powered vehicles, power plants and other areas. However, he does not address the significance of the specific [redacted] alloy that the Petitioner synthesized, or its current impact or influence on the field.

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. *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8-9. 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. *Id.* at 9. USCIS need not accept primarily conclusory statements. *1756, Inc. v. U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.C. Dist. 1990). The authors' assertions in the above-referenced letters do not explain how the Petitioner's research findings have been widely implemented or relied upon by others in the field and do 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 does not show that the impact of his work on the overall field of physics 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." Although the Petitioner emphasizes that some of his articles were published in high-impact journals, this alone is also insufficient to establish that any individual article is regarded in the field as majorly significant. 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." *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 7.

The Petitioner submitted a chart comparing his total citation record to that of 15 other researchers in his field, most of whom are assistant professors of physics or material science at large research universities. The Petitioner did not explain what criteria were used to identify these individuals as a basis for comparison. 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 an impact of major significance 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.

The Petitioner also provided evidence from Clarivate Analytics showing that two of his articles were ranked among the top 1% (and three others were ranked in the top 10%) when grouped by academic field (in this case, physics) and year of publication. 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. 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. A citation

ranking does not provide sufficient context to determine the impact or importance of a given researcher's work 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 five published articles he characterizes as highly cited is regarded as an original contribution of major significance. 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, has made a remarkable impact or influence in his field. His two most cited articles, published in *ACS Nano* and *Nano Letters*, were those referred to by [redacted] as "constructive for subsequent studies."

Further, the record indicates that the Petitioner submitted samples of research and review 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 article entitled, [redacted] [redacted] (*Nano Letters*), in which the authors cited to his 2012 *Nanotechnology* article.<sup>4</sup> However, the article does not distinguish or highlight the Petitioner's written work from the other 42 cited papers. One of the submitted review articles, titled [redacted] [redacted] (*Advanced Materials*), cites to the Petitioner's 2012 *Nano Letters* article along with hundreds of other articles. While the evidence indicates that the Petitioner has contributed to what appears to be an active field of research, we cannot determine that every publication cited in a research or review article is indicative of an individual scientific contribution of major significance.

On appeal, the Petitioner submits three non-precedent decisions concerning scientific researchers who petitioned under this classification, noting that "previous AAO decisions have repeatedly acknowledged the value of the citation record and considered the independent citation itself as solid evidence for the influence of the petitioner's work." These decisions were not published as precedents and therefore do not bind USCIS officers in future adjudications. *See* 8 C.F.R. § 103.3(c). Non-precedent decisions apply existing law and policy to the specific facts of the individual case and may be distinguishable based on the evidence in the record of proceedings, the issues considered, and applicable law and policy. Nevertheless, we note that the Petitioner emphasizes that, in one of the referenced decisions, we determined that "documentation showing more than two hundred independent citations" to the petitioner's published findings provided "solid evidence that other researchers have been influenced by his work and are familiar with it." However, that non-precedent decision also highlights the fact that we placed significant weight on the statements of experts who clearly described how the petitioner's scientific contributions were both original and of major significance in their field. As discussed, the expert opinion letters submitted in this matter do not sufficiently explain and demonstrate the major significance of the Petitioner's contributions.

Considered together, the evidence consisting of the citations to the Petitioner's published findings, the citation statistics, and the reference letters from his fellow physicists and other experts, establishes that the Petitioner has been a productive researcher, and that his published data and findings have been relied upon by others in their own research. It does not demonstrate, however, that the Petitioner has

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<sup>4</sup> Although we discuss two sample articles, we have reviewed and considered each one.

made a contribution of major significance in the field of physics. 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.