



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

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

In Re: 9387310

Date: AUG. 11, 2020

Appeal of Texas Service Center Decision

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

The Petitioner, a researcher in the field of mechanical 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 Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner met the initial evidentiary requirements to demonstrate that he is an individual of extraordinary ability.

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 is currently employed as a mechanical engineer, specializing in the design of [REDACTED]. He received a master of science degree in mechanical engineering from the University of [REDACTED] in 2006, and intends to continue working in this field.

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 two of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), relating to his authorship of scholarly articles and his service as a judge of the work of others in his field. On appeal, the Petitioner asserts that he also meets the evidentiary criteria relating to scientific contributions of major significance to the field. After reviewing all of the evidence in the record, we find that he does not meet at least three of the criteria.

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 evidence demonstrates that the Petitioner has reviewed articles submitted to several journals published by the American Society of Mechanical Engineers (ASME), including *Journal of Fluids Engineering*, *Journal of Energy Resource Technology*, and *Journal of Mechanical Design*. He also submitted evidence which shows that he is one of more than 40 associate editors for the *International Journal of Engines*. We therefore agree that the evidence establishes that the Petitioner meets this criterion.

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.

In his decision, the Director found that neither the evidence of the Petitioner's published research about the use of [redacted] in aeronautical applications, nor his patents for the design of industrial [redacted] demonstrated that he had made original contributions to the field as required under this criterion. Upon review, we disagree, as the review process for both scholarly articles and patent applications is intended to ensure that only original research is published and original innovations receive patent protection. We will therefore turn to whether these original contributions are of major significance to the field of mechanical engineering.

The evidence concerning the Petitioner's contributions to the field of mechanical engineering can be divided into two groups: that concerning the research he conducted as a graduate student, and his work with his employer at the time of filing. As noted above, his graduate research, the results of which was reported through the publication of scholarly articles, focused on the use of [redacted] [redacted] to address the problem of flow separation in low pressure turbine blades, as well as their use as a [redacted] tool for aircraft. The Petitioner submitted several reference letters describing this research and its impact on the field, which will be discussed below.¹

The first reference letter in the record was written by [redacted] of [redacted] University, who collaborated with the Petitioner while teaching at the University [redacted]. He describes this research, and states that it led to the publication of two "particularly successful articles" on the use of [redacted] improve the aerodynamic qualities of aircraft, which have been cited by other researchers in their own published work. He notes that two groups in particular built upon this research, concluding that he "has therefore played a critical role in supporting his peers and ensuring that the field of mechanical and aerospace engineering advances." However, [redacted] does not indicate that this work represented an advancement which remarkably influenced the field or was widely implemented.

[redacted] adds that this research led to a grant from NASA. He expands upon this in a second letter, stating that the Petitioner's "excellent research on turbine blade [redacted] demonstrated a "technique that increased their operational efficiency" and was essential to "our research team's receipt of major funding." But he does not demonstrate how the Petitioner's impact upon his own research group's funding was a contribution of major significance to the overall field of mechanical engineering.

Another reference letter was submitted by [redacted] of [redacted] University (United Kingdom), who indicates that the Petitioner's work is "relevant to my own research." He writes that on three occasions, he used experimental data from the Petitioner's published work to validate the accuracy of models he developed. [redacted] concludes that this data "has proven to be both extremely accurate and highly relevant to the creation of improved models and for the design of better [redacted]." Similarly, [redacted] of [redacted] University (Canada) notes that other researchers have also used data from the Petitioner's experiments to validate the accuracy of their models, and he indicates that he "referenced [the Petitioner's] work because of its outstanding quality and direct relevance to my own work." While these letters demonstrate that the Petitioner's work allowed others to produce better models of [redacted] thereby

¹ We have thoroughly reviewed all of the reference letters in the record, including those not specifically mentioned in this decision.

adding to the knowledge base and further development in this field, they do not demonstrate that the Petitioner's contribution to his field in this manner was of major significance. We note that copies of some of the articles which cite to the Petitioner's work which were included in the record confirm the use of his experimental data as described in these letters, but they do not otherwise provide information to support the Petitioner's claim under this criterion.

On appeal, the Petitioner also refers to evidence from the Microsoft Academic database which he asserts indicate that he is among the top 3% most cited researchers in his field. We first note that the Petitioner initially included this evidence with his RFE response, noting that this figure "is indicative of his standing as one of the small percentage of researchers who have risen to the top of his field..." The Petitioner does not explain how the analysis of this data under the final merits standard of review establishes that he has made a contribution of major significance under 8 C.F.R. § 204.5(h)(3)(v). In addition, the search terms used by the Petitioner include only [redacted] and "electronic engineering," and the search was limited to the years from 2005 to 2019. The Petitioner has not demonstrated that these search criteria would accurately capture all published work relating to the contribution described above, particularly in light of the fact that his field is mechanical engineering, and that he focused on aeronautical applications in his work. Accordingly, this data does not support the assertion that the number of citations to the Petitioner's published work demonstrates that he has made a contribution of major significance in the field of mechanical engineering.

In addition, the Petitioner submitted evidence relating to his work in industry, where he has focused on the design of [redacted] specifically those used in the oil and gas industry. The evidence indicates that he is listed as an inventor on three patents, granted in 2016, 2017 and 2018, all of which concern [redacted] and [redacted] components and were assigned to his employer. On appeal, the Petitioner asserts that the commercialization and sale of [redacted] based on those patents reflects the major significance of these original contributions to his field, and refers to previously submitted reference letters in support of this assertion.

One of those letters was written by [redacted] who indicates that he has worked with the Petitioner for several years, including with a previous employer. [redacted] indicates that the Petitioner served as the engineering lead for two projects, adding structural components to a [redacted] [redacted] to reduce vibration levels and improve reliability, and designing a new [redacted] [redacted] and higher [redacted]s to an air-cooled reciprocating [redacted] which resulted in a reduction in production cost of more than \$10,000. He notes the three patents that resulted from this work, and that the [redacted] are sold internationally.

Another letter regarding this aspect of the Petitioner's work comes from [redacted] who serves as the Director of Product Management in high speed [redacted] for the Petitioner's employer. He provides further detail regarding the [redacted] designed by the Petitioner, indicating that the [redacted] "is one of a kind and has created increased interest in the industry." Regarding the air-cooled cylinders, [redacted] states that the Petitioner "was essential to the design and development of these products," and that his work "resulted in a cost-effective product that has unique features and is commercially sold around the world in large numbers."

Additional letters from managers and executives with the Petitioner's current employer verify his role in the design of the above-mentioned [redacted]. These also include an employment letter verifying his role as a lead engineer, in which he "is responsible for developing new products and technical specifications contributing to the projects from inception to launch." Taken together, these letters demonstrate that the Petitioner has led the design of [redacted] for his employer, including the addition of new design features, thereby successfully fulfilling his duties as a lead engineer. However, they do not demonstrate that this work has remarkably impacted or influenced the field of mechanical engineering. We note that the Petitioner also included several purchase orders for the models of [redacted] for which he led the development, asserting that this evidence demonstrates "the practical and commercial impact [the Petitioner's] work made to the field." Although this evidence confirms that these products are sold to customers in several countries, it does not show that the impact of the Petitioner's contributions extend beyond his own employer, who is able to reap the financial benefits of his work.

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

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 Petitioner submitted evidence which shows that he has co-authored four papers which have been published in the proceedings of scientific conferences. As such, we agree with the Director that he meets 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 that 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.