



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

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

In Re: 6891883

Date: JAN. 14, 2020

Appeal of Texas Service Center Decision

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

The Petitioner, a research scientist in the field of ophthalmology, 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 Texas Service Center denied the petition, concluding that the Petitioner established that she met only two of the ten initial evidentiary criteria for the requested classification, of which she must meet at least three. The Director further found that the Petitioner did not establish that her entry will substantially benefit prospectively the United States.

On appeal, the Petitioner claims that she meets a third evidentiary criterion and is otherwise eligible 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 is a research scientist in the field of ophthalmology. She received her doctor of medicine and her master of science in ophthalmology from [redacted] University in [redacted] China, in 1993 and 1996, respectively. She completed post-doctoral research at the University of [redacted] and has held several positions at the [redacted] Institute of Ophthalmology, [redacted] Hospital, including physician-in-charge, assistant professor, associate professor, and head of stem cell research. At the time of filing, she was employed as a research scientist at the University of [redacted] Health Science Center.

### A. Evidentiary Criteria

Because the Petitioner has not indicated or established that she has received a major, internationally recognized award, she 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 the work of others in her field and authorship of scholarly articles. *See* 8 C.F.R. § 204.5(h)(3)(iv) and (vi). The Petitioner’s documentary evidence indicates that she has peer-reviewed manuscripts for several journals including *Current Eye Research*, *Molecular Vision*, *Journal of Ocular Pharmacology and Therapeutics*, and *Journal of Neuro-Oncology*.

In addition, the record contains evidence that the Petitioner has authored scholarly articles published in journals including *Molecular Vision*, *PLoS ONE*, *Chinese Journal of Ophthalmology*, and *Acta Ophthalmologica*. Accordingly, we agree with the Director that the Petitioner fulfilled the requirements of the judging and scholarly articles criteria. On appeal, the Petitioner maintains that she also satisfies the requirements of the criterion relating to original contributions of major significance in her field.<sup>1</sup>

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<sup>1</sup> We note that the Director determined that the Petitioner claimed, but did not establish, that she meets the criterion related to receipt of lesser nationally or internationally recognized prizes or awards for excellence in her field. *See* 8 C.F.R. § 204.5(h)(3)(i). On appeal, the Petitioner does not contest the Director’s finding that she does not meet this criterion or offer additional arguments. Therefore, we consider this issue to be abandoned. *See Sepulveda v. U.S. Att’y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005); *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885 at \*1, \*9 (E.D.N.Y. Sept. 30, 2011) (the court found the plaintiff’s claims to be abandoned as he failed to raise them on appeal to the AAO).

After reviewing all of the evidence in the record, we find that the Petitioner has not established that she satisfies at least three of the ten initial evidentiary criteria.

*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 meet this criterion, a petitioner must establish that not only have they made original contributions but that they have been of major significance in the field.<sup>2</sup> 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.

Counsel claimed in an introductory letter that the Petitioner has made several original contributions of major significance in the field, as evidenced by her published research, citation record, and letters from experts in the field. These areas of research were initially summarized as follows:<sup>3</sup> (1) she established that the [redacted] acts as an anti-cataract agent; (2) she identified the positive feedback role of [redacted] in lens epithelial cells, which has implications for the prevention of a condition known as posterior capsular opacification (PCO), a complication of cataract removal surgery; and (3) she reported that [redacted] cells [redacted] implanted into the vitreous cavity in mice can reduce the abnormal retinal [redacted] in the oxygen-induced retinopathy model, suggesting that [redacted] are helpful for the [redacted] retinal vessels.

The Petitioner provided evidence reflecting the originality of her research through expert opinion letters offering praise for her expertise and contributions. However, the authors of the letters do not explain why her original research is indicative of major significance.<sup>4</sup> In general, the letters recount the Petitioner's research and findings, indicate their publication in journals, and generally point to the citation of her work by others. Although they reflect the novelty of her work and comment on its potential for further research and clinical application, they do not show how her research and findings have been considered of major importance and how their impact on the field rises to the level required by this criterion.

Two of the submitted expert opinion letters commented on the Petitioner's studies establishing that the [redacted] can ameliorate the rapid progression of [redacted] cataract in rats. For example, [redacted] professor emerita of biomedical sciences at the University of [redacted] describes cataract as the leading cause of visual impairment, provides statistics regarding its prevalence, briefly summarizes the Petitioner's study on [redacted] in rats,

<sup>2</sup> 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).

<sup>3</sup> On appeal, counsel identifies a fourth original contribution, noting that the Petitioner has "[redacted] [redacted] s."

The record reflects that the Petitioner's research in this area was accepted for publication by *The American Journal for Pathology* in [redacted] 2018, subsequent to the filing of the petition in August 2017. The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1).

<sup>4</sup> Although we do not discuss every letter submitted, we have reviewed and considered each one.

and concludes that the Petitioner's research "has a significant impact on the prevention of [redacted] [redacted] cataract, as well as to other [redacted] diseases." This same conclusion is repeated verbatim in a letter from [redacted] of [redacted] Medical School's [redacted] Research Institute. However, neither [redacted] nor [redacted] further elaborated on why the Petitioner's research in this area is considered to be a majorly significant contribution in the field by explaining, for example, how it has already impacted their shared field or describing specific applications that are attributed to the Petitioner's original work, which was published between 1998 and 2003.

The letters from [redacted] both address another area of the Petitioner's original research, with [redacted] noting that she was "the first one to identify that the [redacted] signaling of [redacted] [redacted] in human and rabbit lens epithelials is mediated by [redacted]." Both authors further summarize the Petitioner's research findings and reach identical conclusions that her study "has significant impact on both clinical and basic research for the prevention of PCO." [redacted] [redacted] of [redacted] Biotechnology also generally referenced the Petitioner's "work in lens area," noting that she published multiple papers related to this topic, and that "their importance and applied potentials have drawn great attention" and have been "well accepted and cited." [redacted] states that that "the scientific impact and potential practical benefits are huge in [the Petitioner's] research study." However, neither [redacted], [redacted], nor [redacted] sufficiently detailed in what ways the Petitioner has advanced the state of research in this research or clinical area or elaborated on how the Petitioner's work has already impacted the wider field, much less had a "huge impact."

The Petitioner also provided letters that address her research into [redacted] treatments for retinal [redacted] disease and injury. [redacted] notes that the Petitioner was "the first one to report that [redacted] implanted into the vitreous cavity in mice reduced the abnormal retinal [redacted] in the oxygen-induced retinopathy model" and also "facilitated the improvement of [redacted] and [redacted] of neurogenic factors so that the loss of photoreceptors was hindered." [redacted] states that "the exciting results from [the Petitioner's] studies can potentially open the possibility for a [redacted] therapy of [redacted] retinopathies in patients to increase their vision."<sup>5</sup> [redacted] of the University of [redacted] [redacted] Medical Faculty, also discusses this area of research, noting that the Petitioner's results "may be of profound importance for the therapy of diseases such as [redacted] retinopathy." Like [redacted] he states that "the exciting results from [the Petitioner's] studies can potentially open the possibility for a [redacted] therapy" of retinal diseases.

The Petitioner also provided a letter from [redacted] of the [redacted] Institute of Ophthalmology. He provides a very brief overview of the Petitioner's areas of research interest and describes her as "a pioneering researcher working in the area of ophthalmology" who "has made significant impact in this area," "has had a significant impact in the international scientific community" and whose research "is of great significance."

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<sup>5</sup> [redacted] also addresses a second [redacted] study in which they collaborated with the Petitioner, although it was not included among the original contributions highlighted in the cover letter accompanying the initial submission. The study, titled [redacted] was published in *Acta Ophthalmologica*. [redacted] describes it as providing "a promising [redacted] to improve [redacted] in eyes with [redacted] retinopathies" but does not further address how the study was of major significance in the field.

The letters considered above primarily contain general attestations of the novelty, utility and potential impact 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>6</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>7</sup> USCIS need not accept primarily conclusory statements. *1756, Inc. v. The 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 or establish that the Petitioner's work has had a demonstrable impact on the wider field commensurate with a contribution of major significance.

The Petitioner also submits her publication and citation record from Google Scholar and from the China National Knowledge Infrastructure (CNKI) China Integrated Knowledge Resources System, which provides comparable information for Chinese language publications that cite to her work.<sup>8</sup> But this evidence does not show that the impact of her work on the overall field of ophthalmology or related fields 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." 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 [her] work as authoritative in the field, may be probative of the significance of [her] contributions to the field of endeavor."<sup>9</sup>

Here, the Petitioner has not provided evidence that would, for example, allow us to compare her citations for individual articles to other similarly, highly cited articles that the field views as having been of major significance. Further, 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 the number of citations for a given article often does not provide sufficient context to establish 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 demonstrated that her most cited article is [redacted] published in *Molecular Vision* in 2007, which has more than twice as many citations as her next most cited article. While the Petitioner submitted corroborating evidence in the form of expert opinion letters that briefly

<sup>6</sup> See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8-9.

<sup>7</sup> *Id.* at 9.

<sup>8</sup> Further, we note that evidence that summarizes citations to the Petitioner's entire body of published work, and claims that her overall citation rate is high, do not demonstrate that any specific work of hers is so widely cited and relied upon that it is considered to have made a major impact in her 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>9</sup> *Id.* at 8.

address her research in this area, that evidence, for the reasons already discussed, is not sufficient to establish that the Petitioner's research is regarded as an original contribution of major significance that has remarkably impacted or influenced his field.

Further, the record indicates that the cover letter accompanying the Petitioner's submission included excerpts of published articles that cited to her work<sup>10</sup> in support of her claim that other scientists have relied on her research for the purpose of explaining their results, designing their studies, or for comparison or confirmation purposes. A review of those excerpts, though, does not show the significance of the Petitioner's research to the overall field beyond the authors who cited to her work. For instance, the Petitioner provided an excerpt from an article titled [redacted] published in *Seminars in Cell & Developmental Biology*. The author cites to the Petitioner's work to support her statement that [redacted] . . . ." and [redacted]."

However, the article does not distinguish or highlight the Petitioner's written work from the other papers cited in the article, of which there appear to be at least 129. As a result, the Petitioner has not shown how her published original research has made an impact that rises to the level of "major significance" consistent with this regulatory criterion.

Counsel also emphasizes that the Petitioner's publications have been cited in several book chapters and review articles, noting that "[t]hese books and articles serve to inform the scientific community of major breakthroughs in the field, demonstrating the significance of [the Petitioner's] outstanding research." Counsel's letter included an excerpt from one of these articles, titled [redacted] published by [redacted] in *Seminars in Cell & Developmental Biology*. While the inclusion of the Petitioner's research in this and other review articles is noted, the record did not provide sufficient support for counsel's suggestion that such inclusion is indicative of a "major breakthrough" that has remarkably impacted the field, as such articles may cite to dozens or even hundreds of papers. We cannot determine that every publication cited in a review article is indicative of an original contribution of major significance, and the evidence does not distinguish the Petitioner's publications from the many others cited.

On appeal, counsel refers to several of our non-precedent decisions concerning scientific researchers who petitioned under this classification. 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 have reviewed the decisions although we will not discuss each one separately. Counsel emphasizes that the referenced non-precedent decisions demonstrate that we have previously "acknowledged and confirmed the value of the citation record and considered the independent citation itself as solid evidence for the influence of the petitioner's work." However, the non-precedent decisions also highlight the fact that we placed significant weight on the statements of experts who clearly described how the petitioners' scientific contributions were both original and

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<sup>10</sup> It appears based on the limited excerpts provided that all of the excerpted articles cited her 2006 article titled [redacted] published in *Molecular Vision*. On appeal, the Petitioner submits partial copies of several articles that cite this article and other articles that she co-authored.

of major significance in their field. The expert opinion letters submitted in this matter did not contain sufficient probative analysis regarding the major significance of the Petitioner's contributions.

Considered together, the evidence - consisting of the citations to the Petitioner's published findings, the Petitioner's citation history, and the reference letters from experts in her field - establishes that she is an accomplished scientist. The Petitioner has been productive as a researcher and has published original research, producing data and findings have been relied upon by others in their own research. However, the record does not demonstrate that the Petitioner has made a contribution of major significance in the field of ophthalmological research. Therefore, she 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 her 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 she 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).

In addition, as the Petitioner has not established her extraordinary ability under section 203(b)(1)(A)(i) of the Act, we need not determine whether her "entry to the United States will substantially benefit prospectively the United States" under section 203(b)(1)(A)(iii) and will not address the Directors' separate finding with respect to that issue.

For the reasons discussed above, the Petitioner has not demonstrated her 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.