



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

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

In Re: 7976686

Date: MAR. 31, 2020

Appeal of Nebraska Service Center Decision

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

The Petitioner, a financial trading firm, seeks classification of the Beneficiary, a quantitative researcher, 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 did not establish that the Beneficiary meets at least three of the initial evidentiary criteria for this classification, as required.

On appeal, the Petitioner asserts that the Director failed to give due consideration to the submitted evidence and did not apply the preponderance of the evidence standard to the facts presented.

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 a beneficiary’s 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 it 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 establishes that a beneficiary 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, a financial trading firm, currently employs the Beneficiary as a quantitative researcher. The Beneficiary completed his doctorate degree in physics at [redacted] University in 2016, and received his bachelor of technology degree in physics from the [redacted] Institute of Technology in 2011. He has previously worked as a graduate assistant in the physics department at [redacted] University and as a quantitative summer associate” with [redacted]

A. Evidentiary Criteria

Because the Petitioner has not indicated or established that the Beneficiary has received a major, internationally recognized award, it must establish that he satisfies 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 submitted evidence establishing that the Beneficiary met two of the initial evidentiary criteria, relating to authorship of scholarly articles and high salary or other remuneration. *See* 8 C.F.R. § 204.5(h)(3)(vi) and (ix). On appeal, the Petitioner asserts that the Beneficiary also meets the evidentiary criteria relating to published materials (8 C.F.R. § 204.5(h)(3)(iii)) and original contributions of major significance (8 C.F.R. § 204.5(h)(3)(v)). After reviewing all of the evidence in the record, we find that the Petitioner did not establish that the Beneficiary meets at least three of the initial evidentiary criteria.

Published material about the individual in professional or major trade publications or other major media, relating to the individual’s work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation. 8 C.F.R. § 204.5(h)(3)(iii)

The Petitioner claims that the Beneficiary meets this criterion based on its submission of published articles in scientific journals that cite to the Beneficiary’s own published papers. The Director noted that such articles do not satisfy the plain language of this criterion because such articles are primarily about the authors’ own research and findings, not the Beneficiary or his work.

On appeal, the Petitioner, through counsel, states: “The criterion at 8 CFR 204.5(h) relating to published material about the beneficiary reads ‘Published material in professional publications written by others about the alien’s work in the academic field.’” The Petitioner states that “based on a plain reading of the above, it is clear the Service has imposed evidentiary requirements beyond what is stated in the regulations.”

However, the language quoted in the Petitioner’s brief is not the language found in the applicable regulation at 8 C.F.R. § 204.5(h)(3)(iii). Rather, the Petitioner has quoted the regulation at 8 C.F.R. § 204.5(i)(3)(i)(C), an evidentiary criterion that applies to immigrant petitions for outstanding professors and researchers. The plain language of the applicable regulation requires “Published material *about the alien* in professional or major trade publications or other major media, relating to the alien’s work in the field for which classification is sought.” We agree with the Director that scientific journal articles that include a citation to the Beneficiary’s research among dozens of other citations do not qualify as published material about the Beneficiary. The Petitioner has not submitted evidence establishing that the Beneficiary meets this criterion.

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 a beneficiary made original contributions but that they have been of major significance in the field.¹ For example, a petitioner may show that a beneficiary’s 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 its initial cover letter that the Beneficiary has made four original contributions of major significance, noting that although his published research is in the field of theoretical condensed matter physics, his findings have had “a major impact on related fields and industries.” Although the Petitioner provided evidence reflecting the novelty of the Beneficiary’s research through recommendation letters praising him for the originality of his studies, the letters do not contain specific, detailed information explaining the unusual influence or high impact his research has had on the overall field.²

The first of the four contributions relates to the Beneficiary’s research on [redacted] systems, in which he “investigated two unique metrics used to understand the structure and quantum geography of systems: [redacted] metrics.” [redacted] of [redacted] University explained that the Beneficiary “aimed to create a system with [redacted] quantum distance measurements with local [redacted],” noting that “such a system would represent a completely new frontier for studying the effects of the interaction between electrons in [redacted] systems with [redacted] quantum geometry.” [redacted] states that the Beneficiary established that the [redacted] systems he studied had “several unique properties” and describes those properties. The Petitioner also

¹ 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> (finding that although funded and published work may be “original,” this fact alone is not sufficient to establish that the work is of major significance).

² Although we do not discuss every letter submitted, we have reviewed and considered each one.

provided a letter from [redacted] an assistant professor of physics at University of [redacted] who co-authored the Beneficiary's published research in this area. [redacted] discusses their shared interest in the research, explaining that [redacted] systems (systems where kinetic energy [redacted] . . . can provide important insights on the interplay of strong correlation effects and quantum geometry." He further explains that, prior to the Beneficiary's study, "the effects of different [redacted] metrics in [redacted] systems were largely ignored, despite their importance." [redacted] summarizes the Beneficiary's research, emphasizes that it is "especially novel" and explains that he "introduced an exciting new frontier in the study of interaction effects in systems with [redacted] geometry" which has "laid a strong foundation for future research." While both expert letters address the novelty of the research and generally note that it lays the groundwork for further studies, neither indicates that the Beneficiary's research has been regarded in the field as remarkably impactful or influential.

The Petitioner also claims that the Beneficiary has made original contributions of major significance as a result of three research studies focusing on [redacted] which it describes as "an exotic phase of matter found in several different compounds." The first of these studies involved a type of [redacted] known as the [redacted]. [redacted] an associate professor at the University of [redacted] who co-authored the Petitioner's published research on this topic, states that "[a] particularly insightful contribution by [the Beneficiary] was his recognition that the symmetry properties of the [redacted] implied that each domain wall would have a [redacted] moment," a property very relevant to experimental studies." He further states that, based on the Beneficiary's research, "the field now has a much more comprehensive understanding of this complex state of matter." Similarly, [redacted] University professor [redacted] notes that the Beneficiary's "detailed analysis of [redacted] in [redacted] systems provided several key insights" that are "directly relevant to experimental physicists" and have provided "a strong basis for several additional studies."

[redacted] of University of [redacted] who co-authored the Beneficiary's 2014 article "[redacted]" discusses this research in his letter. He explains that the Beneficiary "evaluated whether [redacted] an interesting state of matter he previously observed in [redacted] systems" could also be found in [redacted] systems." [redacted] summarizes the study, noting that the Beneficiary "theoretically demonstrated the existence of analogs of the [redacted] state in [redacted] systems with high [redacted] numbers, a first of its kind finding in [redacted] physics." He describes the study as "especially valuable to the field of [redacted] physics and beyond because of its versatility" and notes its "significant implications for experimental physics."

The Petitioner also provided an independent advisory opinion from [redacted] Director of the [redacted] Institute for the Physics of [redacted] in Germany. [redacted] primarily focuses on the Beneficiary's 2016 paper entitled "[redacted]" [redacted] describes the "novel research study," noting that the Beneficiary "studied the [redacted] system" in order to "understand how [redacted] chooses its minimum energy state near specific integer densities." [redacted] states that the Beneficiary's findings "were important for the field at large, as they were the first to demonstrate [redacted] within the [redacted] context." He further indicates that the research is "impactful, as it inspired similar studies on other components" and "has direct applications to experimental physics." [redacted]

[redacted] also discusses the novelty of the Beneficiary's study, noting that he has found the Beneficiary's results "immensely useful in properly explaining various complicated experimental measurements."

We agree with the Director's determination that the letters considered above primarily contain attestations of the novelty and utility of the Beneficiary's research studies without providing specific examples of contributions that rise to a level consistent with major significance in his field. Letters that specifically articulate how a petitioner's contributions are of major significance to the field and its impact on subsequent work add value.³ 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.⁴ 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, for example, how the Beneficiary's research findings have been widely implemented or relied upon by others in the field, and do not sufficiently identify their significance and influence. General statements indicating that the Beneficiary's research is "pioneering," "impactful," or "of great value" are not sufficient without an explanation as to why the research is deemed by experts as a contribution of major significance.

On appeal, the Petitioner asserts that the Director's evaluation of the expert letters "fails to give any context to [the Beneficiary's] field of research," noting that as a theoretical physicist his work "focuses on discovering the underlying, theoretical principles that make up the physical world." Further, the Petitioner states that "[a]rguably the foundational insights about our world provided by [the Beneficiary] represent major contributions in their own right." The Petitioner previously submitted an two articles discussing the field of theoretical physics, including one titled [redacted] [redacted] published by the Perimeter Institute for Theoretical Physics. The article discusses theoretical physics as [redacted]' and [redacted] [redacted] because it [redacted] technologies of tomorrow." The article highlights major breakthroughs in theoretical physics that led to technological applications such as wireless communications, transistors, fiber optics, MRI technology, and lasers. It does not follow, however, that any published research in the area of theoretical physics should be deemed an original contribution of major significance. Here, the submitted evidence does not establish how the Beneficiary's own novel research has advanced theoretical physics to the extent that his finding are regarded as remarkably impactful or influential, either to other theoretical physicists, to those focused on experimental or applied physics, or to the larger scientific community.

The Petitioner maintains that the Beneficiary's research is "significant" because "it forms the basis on which other major developments in a wide range of fields are built." The Petitioner references a letter from the Beneficiary's current supervisor, [redacted] and notes that the contributions discussed by [redacted] "represent[] only one example of how theoretical physics can be applied to result in tangible real world development." In his letter, [redacted] a quantitative technologist, states that the Beneficiary's responsibility as a quantitative researcher is focused around "developing numerical methods that can automatically generate forecasting models with statistically robust forecast properties

³ See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8-9.

⁴ *Id.* at 9.

and design scientific experiments that can reliably identify profitable hyperparameters of such methods, making them viable for live trading.” He goes on to describe “[t]hree major contributions of [the Beneficiary’s] work that were of vital importance to [the Petitioner].” Although [redacted] states that the Beneficiary’s “ongoing work has had a significant impact on [the Petitioner], as well as on the scientific community,” he does not elaborate as to how these internal, work-related contributions to the petitioning financial trading company have been of major significance to either the Petitioner’s industry or the scientific community.

On appeal, the Petitioner emphasizes that, in addition to the referenced letters, it provided a variety of other documentary evidence demonstrating the major significance of the Beneficiary’s original contributions to the field of theoretical [redacted] physics. Specifically, the Petitioner notes that it provided: the Beneficiary’s overall citation record, as recorded by Google Scholar; copies of articles that cite to his published work; and information regarding the impact of the scientific journals in which his work has been published and cited.

A review of the submitted articles that cite to the Beneficiary’s research does not show the significance of his contributions to the overall field beyond the authors who cited to his work. For instance, the Petitioner provided a 2014 article entitled, [redacted] [redacted]” published in *Nature Communications*, in which the authors cited to the Beneficiary’s 2013 article published in *Physical Review B*.⁵ However, the authors of the article do not distinguish or highlight the Beneficiary’s research findings from that of the other 42 cited papers. The evidence does not support the Petitioner’s claim that the submitted examples of citations demonstrate that there are “countless studies and accomplishments in the scientific community” that are based on the Beneficiary’s research, or that he has had a major impact on “the international scientific community at large.” Although the record shows that other authors in the scientific community cited the Beneficiary’s work, the Petitioner has not sufficiently demonstrated that his work has been cited as authoritative in the field or has otherwise influenced the field in a significant way. *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, 8.

The Petitioner also emphasizes that some of the articles that cite to the Beneficiary’s work have been published in high impact publications such as *Science* and *Nature*, noting that “each of these publications represent valued sources of information in their respective fields.” Generally, citations can serve as an indication that the field has taken interest in a petitioner’s work. However, the fact that the Beneficiary has published articles that other researchers have referenced is not, by itself, sufficient to establish that he meets all elements of this criterion. 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 a beneficiary’s 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.”⁶

⁵ Although we discuss a representative example here, we have reviewed and considered each article that cites the Beneficiary’s work.

⁶ *See* USCIS Policy Memorandum PM 602-0005.1, *supra* at 8.

The Petitioner argues that the citation rate for several of the Beneficiary's articles exceeds that of "average publications." Specifically, the Petitioner emphasized that, according to a 2017 report by Thompson Reuters' Essential Science Indicators (ESI), the average citation rate for all articles published in 2016 was 1.57 citations. The Petitioner asserts that, based on this ESI report, the average article in any scientific discipline receives between one and two citations from other scientists each year and publications with over 15 citations in their first year are in the top 1% of publications. Based on this limited comparative data, the Petitioner asserts that the Beneficiary's own published papers must be considered "incredibly impactful."

According to the Beneficiary's Google Scholar citation history, he has published one 2016 article with four citations, one 2014 article with six citations, and two 2013 articles with eight and fourteen citations, respectively. Relying on the Petitioner's own suggested average number of citations per year, we note that only one of the Beneficiary's articles appears to have an above-average citation rate. If the Petitioner claims that an "average" article would have between 6 and 12 citations between 2013 and 2019, then the Beneficiary's own 14 citations achieved during that period has not been shown to be in the range of being highly cited, and does not support the Petitioner's claims that the Beneficiary's published work is "incredibly impactful." The Petitioner has not demonstrated that the Beneficiary's citation numbers and his overall number of publications, are indicative of an original contribution of major significance in the field.

Although the Petitioner claims that the Beneficiary "has made tremendously significant contributions to his area of expertise," this claim is not adequately supported by the submitted recommendation letters or citation evidence. While the record, including the reference letters, establishes that the Beneficiary's research has value and has received some attention in the field, it is insufficient to confirm that the impact or influence of his work has risen to the level of "major significance" in the field. *See Kazarian*, 596 F.3d at 1122 (finding that "letters from physics professors attesting to [a beneficiary's] contributions in the field" were insufficient to meet this criterion); *Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013)(upholding a finding that a ballroom dancer had not met this criterion because she did not demonstrate her impact in the field as a whole). The Petitioner has not sufficiently shown that his research – which has led to incremental advancements in the field, as such are expected in any original research – qualifies as contributions of major significance in the field.

Accordingly, based on the relevant documents in the record, the Petitioner has not shown, by a preponderance of the evidence, that the Beneficiary has made original contributions of major significance in the field.

Evidence of the individual'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)

We agree with the Director's determination that the Petitioner submitted evidence to satisfy this criterion. The record reflects that the Beneficiary authored four articles that were published by the journal *Physical Review B*.

Evidence that the individual 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)

The Director determined that the Petitioner submitted sufficient evidence to demonstrate that the Beneficiary meets this criterion. In order to meet this criterion, the Petitioner must demonstrate that the Beneficiary commands a salary or remuneration that is high relative to the compensation paid to others working in the field.⁷ For the reasons outlined below, the record does not reflect that the Petitioner provided sufficient documentary evidence showing that the Beneficiary fulfills this criterion, and the Director's determination will be withdrawn.

The Petitioner stated on the Form I-140 that it has offered the Beneficiary an annual salary of \$150,000 and provided a "Confirmation of Employment Offer" letter dated August 2018, indicating that he "will be compensated at an annual salary of \$150,000 or higher" under the terms and conditions of the immigrant petition filed on his behalf. The Petitioner has not, however, submitted any supporting evidence of the Beneficiary's past earnings, such as recent paystubs or IRS Forms W-2 for a previous year, showing that he has already been receiving the stated annual salary. Therefore, the Petitioner has not provided evidence that the Beneficiary "*has commanded* a high salary" as required by the regulatory language at 8 C.F.R. § 204.5(h)(3)(ix). For this reason alone, we find the evidence insufficient to meet this criterion.

We also note that, as evidence that the Beneficiary's offered salary is high in relation to others in the field, the Petitioner submitted a one-page printout from the Foreign Labor Certification (FLC) Data Center's Online Wage Library. The data provided is for the "Financial Analyst" occupation (OES/SOC code 13-2051.00) in the [redacted] metropolitan area and indicates a "Mean Wage (H-2B)" of \$86,902 per year. The Petitioner asserts that the FLC's "Financial Analyst" title, which according to the provided evidence generally requires only completion of a bachelor's degree, encompasses the Beneficiary's occupational title of "Financial Quantitative Analyst," but does not submit evidence in support of that claim. In fact, on the Form I-140, the Petitioner identified the SOC Code for the Beneficiary's position as 13-2099, which applies to "Financial Specialists, All Other."⁸

Therefore, the Petitioner has not established that the wage information for financial analysts constitutes an appropriate basis for comparison when determining whether the Beneficiary's claimed salary is high in comparison "in relation to others in the field." *See Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994) (considering a professional golfer's earnings versus other PGA Tour golfers); *see also Grimson v. INS*, 934 F. Supp. 965, 968 (N.D. Ill. 1996) (considering NHL enforcer's salary versus other NHL enforcers); *Muni v. INS*, 891 F. Supp. 440, 444-45 (N. D. Ill. 1995) (comparing salary of NHL defensive player to salary of other NHL defensemen). Accordingly, the Petitioner did not establish that the Beneficiary meets this criterion, and we will withdraw the Director's finding to the contrary.

⁷ See USCIS Policy Memorandum PM-602-0005.1, *supra*, at 11.

⁸ The Department of Labor classifies "Financial Quantitative Analysts" under the OES/SOC Code 13-2099.01. See O*Net Online, Summary Report for: 13-2099.01 - Financial Quantitative Analysts, <https://www.onetonline.org/link/summary/13-2099.01> (accessed on Mar. 18, 2020). The FLC data provided indicates that "Financial Analysts" are in O*Net JobZone 4, requiring a bachelor's degree. A "Financial Quantitative Analyst" is in O*Net JobZone 5 and typically requires completion of a graduate degree.

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 Beneficiary has the acclaim and recognition required for the classification sought.

The Petitioner seeks a highly restrictive visa classification on the Beneficiary's behalf, 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. at 954. Here, the Petitioner has not shown that the significance of the Beneficiary's 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 Beneficiary 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 the Beneficiary's 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.