



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

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

In Re: 8468315

Date: MAY 28, 2020

Appeal of Nebraska Service Center Decision

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

The Petitioner, a graduate student at the time of filing, 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 Nebraska Service Center denied the petition, concluding that the record did not establish that the Petitioner had satisfied at least three of ten initial evidentiary criteria, as required. The matter is now before us on appeal.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. 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)(A) of the Act makes immigrant visas available to aliens 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 their 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 they 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

When she filed the petition in June 2018, the Petitioner was a graduate research assistant studying in the [redacted] Devices Laboratory at [redacted] University in [redacted] Tennessee. In August 2018, the Petitioner received her doctorate and began working as a postdoctoral research associate at [redacted] National Laboratory in [redacted] Tennessee.¹

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 Petitioner claims to have met four criteria, summarized below:

- (iii), Published material about the alien in professional or major media;
- (iv), Participation as a judge of the work of others;
- (v), Original contributions of major significance; and
- (vi), Authorship of scholarly articles.

The Director found that the Petitioner met the two criteria numbered (iv) and (vi) of the evidentiary criteria. On appeal, the Petitioner asserts that she also meets the other two claimed criteria. After reviewing all of the evidence in the record, we agree with the Director that the Petitioner has met only two of the four claimed criteria. We explain our findings below.

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. 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 submits copies of 19 online articles, the first of which is essentially a press release from [redacted]'s own website. The other 18 articles (none of them credited to individual authors) are all derived from the [redacted] article, sometimes reworded or paraphrased, but in most cases copied word-for-word, including the title of the article. The Petitioner contends that the websites that reproduced or

¹ The appointment is inherently temporary, for a maximum of three years.

adapted [redacted]'s press release constitute major media, but the record indicates that the sites are essentially aggregators of outside content.

Entitled '[redacted]', the [redacted] article describes how [redacted] of black phosphorus produce small amounts of electricity from movements. These principles could eventually result in the devices being incorporated into clothing to power low-energy devices, but this is described as "[o]ne of the more futuristic applications of this technology," which is still at a preliminary, proof-of-concept stage.

The common source article from [redacted] is not about the Petitioner. It names the Petitioner as one of two students who "co-led the effort to make and test the devices," but apart from this identification, the Petitioner's name does not appear again except in the caption to a group photograph. The article also indicates that an associate professor at [redacted] "directed the research," and quotes him at length. Another [redacted] faculty member credits that associate professor with the "advances in materials and [redacted]" that the article describes.

The regulatory language requires the published material to be "about the alien," and also "relating to the alien's work in the field." These are two separate characteristics; neither implies or encompasses the other. A collective and anonymous reference to a research team may relate to the work of those researchers, but it is not about any specific member of that team.

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 this criterion, petitioners must establish that not only have they made original contributions, but also that those contributions 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. The phrase "major significance" is not superfluous and, thus, it has some meaning. *See Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F. 3d 28, 31 (3rd Cir. 1995) quoted in *APWU v. Potter*, 343 F.3d 619, 626 (2nd Cir. Sep 15, 2003).

A U.S. Citizenship and Immigration Services (USCIS) policy memorandum states:

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, peer-reviewed presentations at academic symposia or peer-reviewed articles in scholarly journals that 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 the alien's work as authoritative in the field, may be probative of the significance of the alien's contributions to the field of endeavor.

USCIS officers should take into account the probative analysis that experts in the field may provide in opinion letters regarding the significance of the alien's contributions in order to assist in giving an assessment of the alien's original contributions of major

significance. That said, not all expert letters provide such analysis. Letters that specifically articulate how the alien's contributions are of major significance to the field and its impact on subsequent work add value. Letters that lack specifics and simply use hyperbolic language do not add value, and are not considered to be probative evidence that may form the basis for meeting this criterion.²

The Petitioner describes her research in technical detail in a 15-page statement. She states, for example: "I successfully fabricated the [redacted] composite foam for [redacted] battery cathodes with high areal loading and high areal capacity by [redacted] infiltration method for the first time."

The Petitioner has submitted several letters which describe her work in highly technical detail, but which do not clearly explain why the Petitioner's work is of major significance in the field. For example, a letter signed by the Petitioner's doctoral research advisor includes this passage:

Our lab has pioneered the design of a battery technology-based [redacted] system for generating electricity from human motions. [The Petitioner] dedicated her effort to the innovative design and fabrication of the [redacted] mechanical strain [redacted] systems. She is the first scientist to integrate [redacted] black phosphorus as electrode for [redacted] system by using electrophoretic deposition. By incorporating two identical [redacted] black phosphorus electrodes, the device exhibited power and energy output of 42 nW/cm² and 0.792 μJ/cm², and is capable [of] working at frequencies at low as 0.01 Hz.

The writer asserts that the Petitioner's work is of value "to fulfill the goal of developing better energy storage devices," but does not fully explain why the Petitioner's contributions, in particular, are of major significance in achieving that goal.

Also, the Petitioner was one member of a research team. Journal articles relating to the work described above have five credited authors. The Petitioner is a co-owner of two U.S. patents; she is one of six named inventors for each. The letter describes the projects themselves, but does not specify the contributions that the Petitioner (rather than her collaborators) made to those projects.

Different researchers (with varying degrees of first-hand familiarity with the Petitioner's work) signed the letters in the record, but there are some indications that the letters are not all of independent origin. Some letters share similarities in formatting (such as passages highlighted in bold type) and phrasing. For example, the letter quoted above also includes this passage:

[The Petitioner] has also been invited and has served as an expert reviewer to judge the works of her peers for scholarly journals in the field. She was invited and peer-reviewed manuscripts submitted to the peer-reviewed scientific journal *Nanotechnology*

² 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*, 9 (Dec. 22, 2010), <http://www.uscis.gov/legal-resources/policy-memoranda>.

and *Materials Research Express*. These journals aim to publish papers at the forefront of [] materials science and technology and especially those of an interdisciplinary nature. To be publishable in these journals, papers must meet the highest scientific quality standards, contain significant and original new science, and should make substantial advances within a particular area of [] science and technology.

A separate letter, attributed to a professor at [] University, includes a mostly identical passage:

[The Petitioner] has served as an expert reviewer to judge the works of other scientists publishing in highly regarded journals in the field.

[The Petitioner] was invited and served as an expert reviewer for the journal *Nanotechnology*. *Nanotechnology* aims to publish papers at the forefront of [] materials science and technology and especially those of an interdisciplinary nature. To be publishable in this journal, papers must meet the highest scientific quality standards, contain significant and original new science, and should make substantial advances within a particular area of [] science and technology.

By way of comparison, the following statement appears in the Petitioner's own statement:

I have been invited and served as an expert reviewer for manuscripts submitted to peer-reviewed journal-*Nanotechnology*. *Nanotechnology* aims to publish papers at the forefront of [] science and technology and especially those of an interdisciplinary nature. To be publishable in this journal, papers must meet the highest scientific quality standards, contain significant and original new science, and should make substantial advances within a particular area of [] science and technology.

In response to a request for evidence, the Petitioner submitted a letter signed by her advisor at [] National Laboratory. That letter contains the following passage:

Using [], [], [], and their mixture, [the Petitioner] compared the electrochemical performances of [] composite anodes with controlled defect density. She further conducted a systematic analysis of the defects-related formation of different alloying products.

A nearly identical passage had previously appeared in the Petitioner's introductory letter:

I compared the electrochemical performances of [] composite anodes with controlled defect density by using [], [], [], and their mixture, and further provided systematic analysis of the defects-related formation of different alloying products.

The use of identical language across various letters from supposedly different sources can diminish the weight and credibility of the assertions in those statements.³

It also bears mentioning that several of the letters rate the Petitioner highly, but only in a limited comparison to “her career stage” as an “emerging early-career scientist.” An achievement that is unusually significant *for a graduate student* may be less consequential in the context of the entire field, which includes many experts with decades of experience.

As noted in the cited USCIS policy memorandum, a “goodly number” of articles that “cite the alien's work as authoritative in the field, may be probative of the significance of the alien’s contributions to the field of endeavor.”⁴ The Petitioner states that the number of citations to her published articles establish the importance of her work. The Petitioner provides a table of baseline citation rates from Clarivate Analytics, indicating that citations to several of the Petitioner’s papers exceed the average citation rates for papers in the broad categories of Chemistry, Materials Science, and Engineering. An above-average citation rate, however, is not necessarily indicative of major significance in the field. Averages alone cannot suffice without ranges to show how the Petitioner’s published work compares to the most-cited articles.

In response to a request for evidence, the Petitioner showed that one of her articles “received enough citations to place it in the top 1% of the academic field of Materials Science based on a highly cited threshold for the field and publication year.” This notification, however, was dated “[a]s of November/December 2018,” several months after the filing date. The Petitioner does not submit similar evidence from before the date of filing. The Petitioner must meet eligibility requirements as of the date of filing. *See* 8 C.F.R. § 103.2(b)(1).

The Petitioner submits percentile figures on appeal, relating to citation rates, but these figures are from 2019 and do not show where the Petitioner stood as of the filing date in June 2018.

The same printout that refers to the Petitioner’s article as “highly cited” also shows the citation totals for 30 of the 59 articles that the Petitioner and her co-authors cited in that article. At the time, the Petitioner’s article had 54 citations. Of the 30 listed sources, 25 had more than 54 citations; 6 of those articles were cited more than 1000 times each. The evidence indicates that the Petitioner’s work falls within a narrow research area that, overall, has attracted significant interest and attention in the field, but it does not show that the Petitioner’s work is of major significance within that same area.

The Petitioner also submitted percentile rankings for page views of some of her articles, compared to other articles that appeared in the same issues of the respective journals. The Petitioner does not establish a direct correlation between page views and citation, or other measurable indicia of impact.

³ *See Surinder Singh v. BIA*, 438 F.3d 145, 148 (2d Cir. 2006) (upholding an adverse credibility determination in asylum proceedings based in part on the similarity of the affidavits); *see also Mei Chai Ye v. U.S. Dep’t. of Justice*, 489 F.3d 517, 519 (2d Cir. 2007) (concluding that an immigration judge may reasonably infer that when an asylum applicant submits strikingly similar affidavits, the applicant is the common source). In evaluating the evidence, the truth is to be determined not by the quantity of evidence alone but by its quality. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (quoting *Matter of E-M-*, 20 I&N Dec. 77, 80 (Comm’r 1989).

⁴ USCIS Policy Memorandum PM-602-0005.1, *supra*.

The Petitioner submits a table comparing the citations of her papers from 2017 and 2018 to the citations earned by three other “highly esteemed scientists” during the same period. The Petitioner does not establish that those three individuals constitute a representative sample.

The record shows that, at the time of filing, one of the Petitioner’s fellow graduate students at [redacted] had nearly 60 more citations than the Petitioner, despite publishing a slightly smaller number of articles. The other student’s h-index and i-10 index (which track overall citation rates rather than the performance of individual articles) are also higher than the Petitioner’s indices.

Among the articles that cite to her work, the Petitioner draws special attention to six “important review articles published by prestigious publications, which reported, commented and cited [her] research contributions.” Unlike other articles that report on original research and cite source material for background, these review articles report on recent literature pertaining to a particular area of interest.

Each review article contains, on average, more than 190 citations. The articles do not indicate that the cited sources were chosen because of their importance or influence, as opposed to their relevance to the subject under review.

The review articles offer different degrees of evaluation of the Petitioner’s work. An article in *ChemistrySelect*, which “focus[es] on some of the effective strategies in boosting the electrochemical performance of [redacted],” states that the Petitioner’s “article offers an effective and broadly adaptable method to establish different [redacted] building blocks for cell electrode materials.” The Petitioner’s article is one of at least six cited in the section headed “[redacted].” Several other review articles focus on describing, rather than evaluating, the research in the articles reviewed.

Apart from scholarly literature, the Petitioner contends that her work has also attracted attention from the mainstream press, the most prominent example of which appears to be an online article from NBC News. That article describes research into “[redacted] clothes” by several different groups, one of which is the Petitioner’s research team at [redacted]. The article identifies the faculty member in charge of the research, but does not mention the Petitioner individually. Likewise, the other submitted articles (many of which are further distillations of [redacted]’s press release) identify [redacted] but not the Petitioner. Because the articles do not distinguish the Petitioner from other anonymous members of the research team, they cannot serve to identify specific contributions that the Petitioner personally made.

In denying the petition, the Director determined that the Petitioner has not shown the extent to which her work has influenced the field, for example through use of her patented technology. On appeal, the Petitioner asserts that the Director unreasonably called for evidence of widespread use of her work. The Petitioner, however, deals in applied science and engineering. Given that the Petitioner has pointed to her patents as evidence of her contributions, it is relevant to consider how the patented technology has been put into use. The regulation calls for evidence of original contributions of major significance. Patents, on their own, attest to originality rather than significance.

The Petitioner's work concerns the generation and storage of electricity, which is an area of significant interest with practical applications that affect many areas of everyday life. It is not enough, however, to work in an important area, or to study at a well-regarded institution. The Petitioner played a key role in a research project that [] publicized in a press release, which several news outlets then carried, but the results reported in that press release were tentative and preliminary, with disclaimers about the work that remains to be done before commercial implementation becomes possible.

Likewise, the field's interest in certain types of battery technology have led to citations of some of the Petitioner's articles, but the evidence made available to the Director was highly selective and does not show recognition of the Petitioner's work, in particular, as having major significance. The Petitioner notes that researchers in several different countries have cited her published work, but this geographic distribution does not inherently attest to the significance of the work cited.

The Petitioner continues to engage in promising work that could lead to important new practical applications, but she has not shown that, as of the time of filing, she had made original contributions of major significance in the field.

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. At the time of filing, the Petitioner was still a graduate student. As of this adjudication, her postdoctoral training is still ongoing. As noted previously, letters in the record indicate that the Petitioner is "at the very top of the field comparing [*sic*] to her peers in the same field as [*sic*] *emerging early-career scientist*," and "has risen to the very top of her field *at her career stage*." The regulatory threshold, however, is the very top of the field, not the very top of "her peers" "at her career stage." The Petitioner cannot arbitrarily exclude the most experienced and accomplished members of her field when establishing her standing in that field.

We have already explained why the Petitioner has not satisfied the requirements of 8 C.F.R. § 204.5(h)(3)(iii), relating to published material about her. Beyond the prior discussion, it is significant that all the submitted published material appeared in late July 2017. Other deficiencies aside, a single burst of media attention is not strong evidence of *sustained* acclaim.

Similarly, when the Petitioner filed the petition, more than half of her total citations related to one article, published in 2014. Had the proceeding reached a final merits determination, we would have taken into account that the record does not establish a consistent pattern of heavily cited articles as of the filing date.

The Petitioner continues to perform valuable work, but the earliest stages of a promising career in an important field are not tantamount to sustained national or international acclaim.

III. CONCLUSION

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.

ORDER: The appeal is dismissed.