



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

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

In Re: 8538185

Date: MAY 29, 2020

Appeal of Texas Service Center Decision

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

The Petitioner, a postdoctoral optoelectronics researcher, 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 Petitioner had satisfied only two of the initial evidentiary criteria, of which he must meet at least three.

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 indicates employment as a postdoctoral researcher in the electrical and computer engineering department at the University [REDACTED]. 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).

In denying the petition, the Director determined that the Petitioner fulfilled two of the initial evidentiary criteria, judging at 8 C.F.R. § 204.5(h)(3)(iv) and scholarly articles at 8 C.F.R. § 204.5(h)(3)(vi). The record reflects that the Petitioner reviewed papers for journals. In addition, he authored scholarly articles in professional publications. Accordingly, we agree with the Director that the Petitioner fulfilled the judging and scholarly articles criteria.

On appeal, the Petitioner asserts that he meets an additional criterion, discussed below. After reviewing all of the evidence in the record, we conclude that the record does not support a finding that the Petitioner satisfies the requirements of at least three criteria.

*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).

The Petitioner argues that he meets this criterion based on the citation record of his work and patents. 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.<sup>1</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.

Regarding his citations, the Petitioner initially provided evidence from Google Scholar and claimed that “[p]erhaps the strongest evidence of the major significance of [his] scientific and scholarly contributions is the 1,131 citations his work has received to date.” However, the Petitioner did not demonstrate how his cumulative number of citations identifies which of his works represent

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<sup>1</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> (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).

contributions of major significance in the field. In addition, aggregate citation figures tend to reflect an alien's overall publication record, rather than identifying which research the field considers to be majorly significant.<sup>2</sup> Further, several factors may impact total citations figures, such as the number of published articles and length of career of the author. Here, evaluating cumulative citations is more appropriate in determining whether the record shows sustained national or international acclaim, that he is one of that small percentage at the very top of the field of endeavor, and that his achievements have been recognized in the field through extensive documentation in a final merits determination if the alien meets at least three of the evidentiary criteria. *See Kazarian* 596 F.3d at 1115.<sup>3</sup>

In addition, the Petitioner contended that "his individual papers are also among the most cited in his field" and claimed that nine of his papers placed between 0.1% to 10% most cited papers in the year of publication. The record reflects that he provided data from Clarivate Analytics regarding baseline citation rates and percentiles by year of publication for the physics field. The comparative ranking to baseline or average citation rates, however, does not automatically establish majorly significant contributions in his field.<sup>4</sup> Again, the issue for this criterion is whether the Petitioner has made original contributions of major significance in the field rather than where his citation rates rank among the averages of others in his field. Moreover, the Petitioner did not provide corroborating evidence to complement each of his articles. Publications and presentations are not sufficient under 8 C.F.R. § 204.5(h)(3)(v) absent evidence that they were of "major significance." *See Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009), *aff'd in part*, 596 F.3d 1115. Here, the Petitioner did not demonstrate that his nine articles, using Clarivate Analytics methodology through citation numbers and percentiles, resulted in original contributions of major significance in the field.

Furthermore, the evidence from Google Scholar reflected that his highest cited article received over 300 citations, with two of his articles receiving over 200 citations and one article receiving over 100 citations. Once again, this criterion requires the Petitioner to establish that he has made original contributions of major significance in the field. Thus, the burden is on the Petitioner to not only identify his original contributions but to also explain why they are of major significance in the field. Generally, citations can serve as an indication that the field has taken interest in a petitioner's research or written work. However, the Petitioner has not sufficiently shown that his citations for these published articles are commensurate with contributions of major significance.<sup>5</sup> Here, the Petitioner did not articulate the significance or relevance of the citations to his articles. Although his citations

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<sup>2</sup> In fact, the Petitioner submitted a recommendation letter from [redacted] who indicated that "a citation total this high is not necessarily completely unusual among physics researchers."

<sup>3</sup> Similarly, the Director indicated in his request for evidence and decision that [w]hen compared with his co-authors, the significance of the number of [the Petitioner's] citations is significantly less impressive." Here, the evaluation of the Petitioner's cumulative citations to the cumulative citations of others in the field is more appropriate in a final merits determination rather than in establishing eligibility for this criterion.

<sup>4</sup> For instance, according to the data from Clarivate Analytics, physics papers published in 2018 receiving only nine, five, and two citations are claimed to be in the top 0.01%, 0.10%, and 1.00%, respectively. The Petitioner did not demonstrate that papers with such citation counts have necessarily had a major, significant impact or influence in the field as evidenced by being among the top percentile of most highly cited articles according to year of publication.

<sup>5</sup> *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8-9 (providing an example that 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 individual's work as authoritative in the field, may be probative of the significance of the person's contributions to the field of endeavor).

indicate his research has received attention from the field, the Petitioner did not demonstrate that his citation numbers to these articles represent majorly significant contributions in the field.

In response to the Director's request for evidence, the Petitioner argued that "[a] much better way to use citations to evaluate the major significance of [his] work is by comparing the level of citation of his individual scholarly contributions to those of all papers published in his field in the same year." Although the Petitioner submitted additional screenshots from Clarivate Analytics comparing the citations of his two highest cited articles to the citations of articles from 2015 and 2016, such a comparative analysis does not necessarily show that all articles receiving a certain level of citations in a particular year automatically establishes contributions of major significance. Here, the Petitioner did not demonstrate that his two highest cited articles qualify as contributions of major significance based on likening his articles to those published in the same year.

In addition, the Petitioner offered three recommendation letters that recount his research and findings and indicate their publications in journals. Although they reflect the novelty of his work, they do not sufficiently articulate how his research and findings have impacted the field in a significant manner. For instance, [redacted] discussed the Petitioner's *Advanced Materials* article and indicated that "[t]he ultimate result was the fabrication of [redacted] LEDs with the highest [redacted] efficiency ever reported." However, [redacted] did not explain how the Petitioner's research significantly impacted the field. Likewise, [redacted] referenced the Petitioner's *Advanced Materials* article and stated the Petitioner "achieved the best ever recorded efficiency for [redacted] LED light." Again, [redacted] did not elaborate and show how the field considers this result to be a contribution of major significance.

Similarly, although [redacted] opined that the Petitioner's *Nano Letters* article was "ground-breaking, first-of-its-kind research of [redacted] nanocrystals" and "was among the first a few researchers to confirm that [redacted] also have [*sic*] very good [redacted] properties as well," he did not explain how this original finding resulted in being majorly significant in the field. Likewise, [redacted] and [redacted] summarized the Petitioner's research and findings in his *Nano Letters* article without providing further information showing that the research rises to a level of major significance required for this regulatory criterion. Again, publication alone is not sufficient under 8 C.F.R. § 204.5(h)(3)(v). See *Kazarian v. USCIS*, 580 F.3d at 1036, *aff'd in part*, 596 F.3d at 1115. Moreover, while [redacted], [redacted] and [redacted] indicated that they have cited to the Petitioner's work in their own written material, they did not show how the Petitioner's articles have been majorly significant in the overall field beyond their own work.<sup>6</sup>

As discussed above, the Petitioner's letters do not contain specific, detailed information explaining the unusual influence or high impact his research or work has had on the overall field. Letters that specifically articulate how a petitioner's contributions are of major significance in the field and its impact on subsequent work add value.<sup>7</sup> On the other hand, 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

<sup>6</sup> See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8-9; see also *Visinscaia*, 4 F. Supp. 3d at 134-35 (upholding a finding that a ballroom dancer had not met this criterion because she did not corroborate her impact in the field as a whole).

<sup>7</sup> See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8-9.

for meeting this criterion.<sup>8</sup> Moreover, 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).

Regarding his patents, the Petitioner submitted evidence showing him as the inventor of four patents. In addition, the Petitioner provided an email from [redacted] indicating that [redacted] [redacted] “is planning to commerciali[z]e [redacted] for [redacted] applications,” and “[w]e are now negotiating license terms with [redacted]” The Director concluded:

The [Petitioner’s] patents have been recognized for their potential as is evidenced by the licensing negotiations; however, the evidence submitted does not indicate that the potential was realized prior to the time of the filing of this petition.

A patent is evidence of originality and may support that the petitioner’s contribution is original. The issuance of a patent, by itself, does not verify the significance of the innovation patented because the patent’s significance is not evaluated during the application process.

Although the patents show the originality of the Petitioner’s work, without evidence that the invention or innovation has been widely used or adopted in the field, or have otherwise influenced the field in a significant way, the patents do not establish that the Petitioner meets this criterion.

The contribution of the innovation to the field as a whole must be determined by USCIS on a case-by-case basis. There is no evidence that the patent has already been licensed and/or resulted in significant commercial sales, or had an impact on researchers or individuals in the field.

As he sufficiently and correctly evaluated and discussed the Petitioner’s patent evidence, we concur with the Director’s findings. Moreover, as indicated by the Director, a patent generally recognizes the originality of an invention or idea but does not necessarily establish it as a contribution of major significance in the field. Here, the Petitioner’s patents show the originality of his work, but he did not demonstrate that any of them resulted in major significance in the field.

Furthermore, although he references an article posted on forbes.com stating that “[o]f today’s 2.1 million active patents, 95 percent fail to be licensed or commercialized,” the Petitioner did not establish that the two referenced patents in the email were commercialized by [redacted] rather than in the process of negotiations. Moreover, the Petitioner did not demonstrate that a company’s negotiation to potentially commercialize a patent demonstrates that the field already recognizes it as being majorly significant. Regardless, the Petitioner did not show that the commercialization of patents by companies automatically evidences contributions of major significance in the field. Even if [redacted] commercialized the patents, the Petitioner did not establish the impact or influence of the patent in the overall field rather than limited to the company. In addition, the Petitioner did not

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<sup>8</sup> *Id.* at 9. See also *Kazarian*, 580 F.3d at 1036, *aff’d in part*, 596 F.3d at 1115 (holding that letters that repeat the regulatory language but do not explain how an individual’s contributions have already influenced the field are insufficient to establish original contributions of major significance in the field).

demonstrate the result of the company's commercialization, such as high sales or widespread usability of a product or application.

For the reasons discussed above, considered both individually and collectively, the Petitioner has not shown that he has made original contributions of major significance in the field.

### III. CONCLUSION

The Petitioner has not submitted the required initial evidence of either a one-time achievement or documents that meet at least three of the ten criteria. As a result, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. Nevertheless, we advise that we have reviewed the record in the aggregate, concluding that it does not support a finding that the Petitioner has established the acclaim and recognition required for the classification sought.

The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward the top. USCIS has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994). Here, the Petitioner has not shown that the significance of his work is indicative of the required sustained national or international acclaim or that it is consistent with a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate that the Petitioner has garnered national or international acclaim in the field, and he is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2). Although the Petitioner has reviewed papers, conducted research, and authored scholarly articles, the record does not contain sufficient evidence establishing that he is among the upper echelon in his field.

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.