



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

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

In Re: 9433786

Date: OCT. 5, 2020

Appeal of Nebraska Service Center Decision

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

The Petitioner, a researcher focusing his work in the areas of radiation biology, neuroscience, and Gulf War Illness (GWI), 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 while the Petitioner submitted sufficient evidence to meet the initial evidentiary requirement, meeting at least three of the criteria under 8 C.F.R. § 204.5(h)(3), the record did not establish that he had sustained national or international acclaim or was one of the small percentage at the top of his field. On appeal, the Petitioner asserts that the Director failed to consider evidence in the record and applied incorrect legal standards.

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) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011). This two-step analysis is consistent with our holding that the “truth is to be determined not by the quantity of evidence alone but by its quality,” as well as the principle that we examine “each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.” *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

## II. ANALYSIS

The Petitioner is an assistant professor in the Department of Radiation Oncology at the University of [REDACTED]. He received his Ph.D. in pharmaceutical sciences from [REDACTED] University in 2008, and completed his initial postdoctoral training at [REDACTED] University before joining [REDACTED]. He intends to continue to pursue his research in the areas of radiation biology, neuroscience, and Gulf War Illness(GWI).

### A. Evidentiary Criteria

Because the Petitioner has not indicated or established that he has received a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Director found that the Petitioner met three of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), relating to his authorship of scholarly articles, judge of the work of others in his field, and published material about him and his work in major media. However, he did not explain in his decision what evidence supported these findings, or explain why the evidence supporting two other criteria was found to be insufficient. After reviewing all of the evidence in the record, we disagree with the Director’s finding regarding the criterion pertaining to published material about him, and withdraw that portion of his decision. Further, we agree that the Petitioner meets the requirements of the other two criteria, but find that he does not meet the requisite third criterion to satisfy the initial evidence requirement of the extraordinary ability classification.

We note that the Petitioner has submitted new evidence along with his appeal brief. Where, as here, a Petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaighena*, 19 I&N Dec. 533 (BIA 1988). As the Director issued a request for evidence (RFE) which included an explanation of the deficiencies in the record and a list of evidence that could be submitted to overcome those deficiencies, we will not consider this new evidence in our decision.

*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)

As noted above, the Director found that the Petitioner met this criterion, but did not indicate his reason for that finding or provide an analysis of the evidence submitted. The record includes several media articles published on the websites of organizations and publications such as *Science Daily*, *NBC News*, *The Scientist Magazine*, *The Economic Times*, NDTV and *The Hindu*<sup>1</sup>. These articles report on scholarly articles written by the Petitioner and his colleagues about the effects of radiation on the brain and central nervous system, due to either space travel or cancer treatment. While several of these articles identify the Petitioner as a researcher who contributed to the research results discussed, and some include the same quote from him, none of these articles are about him, but are instead about the research and its conclusions and implications. Articles that are not about the petitioner do not meet this regulatory criterion. See, e.g., *Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at \*1, \*7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles about a show are not about the actor). Accordingly, we disagree with the Director and withdraw his finding that the Petitioner meets this criterion.

*Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specialization for which classification is sought.* 8 C.F.R. § 204.5(h)(3)(iv)

The evidence establishes that the Petitioner has served as a peer reviewer for articles submitted to journals such as *Radiation Research*, *Food*, and *Cancer Biotherapy and Radiopharmaceuticals*. In addition, he serves as an editor for the journals *Innovare Journal of Health Science* and *Indo Global Journal of Pharmaceutical Sciences*. We therefore agree with the Director's finding that the Petitioner meets this criterion.

*Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.* 8 C.F.R. § 204.5(h)(3)(v)

To satisfy the regulation at 8 C.F.R. § 204.5(h)(3)(v), a petitioner must establish that not only has he made original contributions, but that they have been of major significance in the field. For example, a Petitioner may show that the contributions have been widely implemented throughout the field, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance.

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<sup>1</sup> We note that several of these publications carried a Reuters article with little or no modification.

The Petitioner claims to have made original scientific contributions of major significance focused in radiation biology, neuroscience and GWI treatment, and submitted ten reference letters in support of these claims.<sup>2</sup> On appeal, he asserts that the Director failed to give adequate consideration to these letters. Upon review, we first note that several of the letters share a common structure, including separate, titled sections devoted to the writer's opinion of whether the Petitioner meets certain evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), and include frequent repetition of the regulatory language under these criteria. For example, a letter from [redacted] of [redacted] includes an initial section titled [*The Petitioner*] is a scientist with extraordinary ability who is currently playing a critical role in our laboratory at the University [redacted] and a second section titled [*The Petitioner*] has made innovative and original scientific contributions of major significance in cognitive neuroscience and radiation biology. Similarly, a letter from [redacted] of the University [redacted] contains several section headings, including [*The Petitioner*] has made original and novel research contributions of major significance in the field of ionizing radiation, neuroscience, galactic cosmic rays, Gulf War Illness, cognitive and mood deficits, epilepsy, and PTSD, and [*The Petitioner's*] research contributions have national or even global implications within the fields of his endeavor, as evidenced by his publications in high-impact professional journals with international circulation. Other reference letters in the record replace the section headings with sentences in bold at the beginning of some paragraphs, also repeating the regulatory language.

As a general concept, when an alien has provided affidavits from different persons that contribute to the alien's eligibility claim, but the language and structure contained within the affidavits is strikingly similar, the trier of fact may treat those similarities as a basis for questioning the claims of the alien. See *Surinder Singh v. Board of Immigration Appeals*, 438 F.3d 145, 148 (2d Cir. 2006). When affidavits contain such similarities, it is reasonable to infer that the alien who submitted the strikingly similar documents is the actual source from where the suspicious similarities derive. See *Mei Chai Ye v. U.S. Dept. of Justice*, 489 F.3d 517, 519 (2d Cir. 2007). Here, the similar structure of these reference letters strongly indicates that the Petitioner or his representative is the source of the content of these letters. We further note that several of the reference letters describe the Petitioner's research as having "been reduced to" papers which were published in journals, a phrase which also appears in the Petitioner's own written statement. As such, the evidentiary value of these reference letters in demonstrating the significance of the Petitioner's contributions is greatly diminished.<sup>3</sup>

In addition, the letters include frequent repetition of the regulatory language of this (as well as other) criteria beyond the section headings and bolded sentences, but do not adequately explain how the Petitioner's research has led to contributions of major significance. [redacted]'s letter describes, in great detail, the Petitioner's research on the cognitive effects of chemotherapy and radiotherapy ("chemo brain"), as well as the damaging effects of galactic cosmic rays on the central nervous system, and indicates that this work has potential applications to the improvement of cancer patient health and

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<sup>2</sup> All of the reference letters in the record have been thoroughly reviewed, including those not specifically mentioned in this decision.

<sup>3</sup> We also note that several of the reference letters provide historical and circulation or viewership information about some of the media outlets which have published articles about the Petitioner's research, and others include data and graphics from third-party sources about the level of attention to certain of the Petitioner's published articles, information which appears in separate evidence in the record discussed below. The appearance of this outside, second or third hand information in the letters provides additional indication as to the source of the content of these letters, and further diminishes their evidentiary value.

to minimizing health risks during space travel. However, we note that despite [redacted] having supervised and collaborated with the Petitioner at [redacted] for approximately eight years prior to the filing of this petition, he does not provide insights into the Petitioner's role in and contribution to these research projects, stating only that he "has had an impact on my productivity in research" and "has worked on several projects." In addition, in discussing the significance of these contributions, the letter refers to the prestige of the journals in which this work has been published, and the attention it has received in popular media. But we will not assume that all papers published in prestigious scientific journals have impact or influence on their respective fields, and [redacted] does not explain how attention to the Petitioner's research in popular or general media reflects a significant contribution to the scientific field.

Similarly, [redacted] who also collaborated with the Petitioner at [redacted] describes four different research projects in which the Petitioner participated, including his development of a computer model to assess the effects of radiation on the brain. Much like in [redacted]'s letter, he describes the potential impact of this research on the field, indicating that the model "will be extremely valuable for accurately and efficiently interpreting experimental data..." He also points to the prestige of the journals in which some of the Petitioner's papers have been published, as well as media coverage of the Petitioner's research on the effects of cranial irradiation, stating that coverage "by mainstream media outlets and professional publications... is evidence of the major significance of his original research contributions in the neuroscience field." However, repetition of the regulatory language here and in other reference letters in the record does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Ayvr Associates, Inc. v. Meissner*, No. 95 CIV. 10729, \*1, \*5 (S.D.N.Y. Apr. 18, 1997). [redacted] does not indicate that the Petitioner's research has remarkably impacted or influenced the field, or has otherwise risen to a level of major significance.

Another reference letter was submitted by [redacted] of [redacted] University [redacted] who states that he is familiar with the Petitioner's work on the effects of low dose radiation on neural stem and precursor cells, and cited to the Petitioner's article published in the journal *Antioxidants and Redox Signal*. However, he does not explain why he cited to this paper or how it affected his research, but instead describes several of the Petitioner's other research projects, some of which were also described in the reference letters previously discussed. [redacted] also focuses on the prestige of the journals in which the Petitioner's work has been published, and the coverage of research projects in which the Petitioner was involved by major media outlets. But he does not explain how this major media coverage shows a contribution to other researchers in the field, rather than serving as an indicator of popular interest in the subject matter.

[redacted] also submitted a reference letter on behalf of the Petitioner, in which she initially focuses on his research on GWI. She explains that the Petitioner exposed rats to low doses of chemicals to which Gulf War veterans had been exposed and determined that combined exposure to these chemicals affected both mood and cognitive abilities. [redacted] also indicates that the Research Advisory Committee (RAC), created by Congress in 1998, "adopted [the Petitioner's] results in understanding the Gulf War illness in veterans" and "frequently referenced [the Petitioner's] publication in detail in its public report." However, the record does not include a report from the RAC to substantiate this statement. A document titled *The Gulf War Illness Landscape* was submitted, which was created by the Department of Defense Gulf War Illness Research Program. It notes that a

paper authored by the Petitioner was one of several reporting the effects of exposure to a low dose chemical combination in rodents. But this single citation does not show that the Petitioner's work was "frequently referenced," and this report does not otherwise demonstrate that it has been of major significance in the understanding, diagnosis or treatment of GWI.

All of the reference letters discussed above, as well as additional letters not discussed, mention the total number of papers authored and coauthored by the Petitioner, and the total number of citations to these papers by other scientists in their own published work. However, although the total number of citations to the Petitioner's published work is one of several factors that may be appropriately weighed in a final merits determination to determine whether he is one of the small percentage at the top of his field, he has not demonstrated the value of this overall citation data in assessing whether the individual contributions he has made to his field have been of major significance.

The Petitioner also submitted data about the rate of citation to his individual papers, from several third-party sources, which he asserts on appeal was not considered by the Director in his decision. The first set of data the Petitioner refers to is the Altmetric Attention Score, which the evidence indicates "is calculated based on two main sources of online attention: social media and mainstream news media." The Petitioner notes that three of the journals in which his papers have been published "repeatedly report that [the Petitioner's] scientific papers published in the journals are one of the top viewed/read papers or have received one of the highest Altmetric Attention Scores," and submits evidence regarding six of his papers. On review of this evidence, it appears to be more accurate to state that these journals provide access on their websites to this and other data from third parties. The description of this data presented along with the Petitioner's co-authored article [redacted] [redacted] ' which was published in the journal *Scientific Reports* in [redacted] states that this score "is calculated based on two main sources of online attention: social media and mainstream news media." As mentioned in the Director's decision, this attention includes mentions in news articles, blogs, and Twitter, Facebook and Google+ posts. While the Petitioner asserts that this evidence shows national or international acclaim and that he's one of the small percentage at the top of his field, an argument more appropriate in a final merits analysis, he does not explain or demonstrate that even very high attention in social media and mainstream news media is indicative of the subject research being of major significance to other scientists conducting radiation biology, neuroscience, and GWI research.

Another set of data presented by the Petitioner is intended to compare the rate and frequency of citations to his articles to those of other scientists in his field. In response to the Director's request for evidence (RFE), he submitted tables from Clarivate Analytics showing "baseline" citation rates in a small number of broad fields for the years 2008 through 2018, as well percentiles showing citation figures for the same fields and years. The Petitioner states, for example, that a paper which was published in the journal *Experimental Neurology* in [redacted] was cited by other researchers on 14 occasions, and notes that this data indicates that that "is 16.66 times higher than the average." However, although a paper which has been cited on 14 occasions in one year has received more attention from other researchers than a paper cited only once in that same time period, we cannot infer from this data that the research described in the former paper has therefore made a contribution of major significance in a particular field.

Additional data from Clarivate Analytics indicates that the number of citations to some of the Petitioner's published papers places them in the top 10% or top 1% for the field of "neuroscience and behavior" in comparison with other papers published in the same year. We first note that the citation figures for papers published in 2017 and 2018 do not show a significant difference between the average and those ranked in the top 10% (3 and 9 citations, respectively, in 2017.) Similar to our analysis of the data referenced above, we will not assume that a paper cited on 9 occasions in one year has made a contribution to the field which is of noticeably greater significance than one which has been cited 3 times in the same period. More importantly, although these figures indicate that some of the articles co-authored by the Petitioner have drawn greater interest from other researchers than the average published paper in the field, he has not shown that this interest is sufficient to demonstrate that the research reported in these papers constitutes a contribution of major significance to the field.

The Petitioner also focused on citations to his work in review articles. However, other than providing information regarding the authors of the review articles and the journals in which they were published, he does not explain the significance of the review articles or the citation of his work by those articles. Further, although the Petitioner asserts that these reviews comment on or highlight his work, in most cases his work is reported along with that of other research groups who published similar research findings. In his appeal brief, the Petitioner describes a similar conclusion in the Director's decision as representing an "exclusivity" requirement which is not found in the regulations, but this was not presented as a requirement by the Director, nor do we do so here. Rather, we are evaluating the extent to which the Petitioner's work is commented upon or highlighted as he asserts.

One example of a review article in the record was published in *Nature Reviews Neurology* in January [redacted] and is titled [redacted] [redacted]. This article cites to three of the Petitioner's articles in its opening section. For instance, in citing a paper co-authored by the Petitioner, it indicates that it was one of three papers which defined the term "early" as [redacted]. In another section, the review paper cites another of the Petitioner's articles as one of three identifying the brain structures most commonly affected by radiation treatment. While these citations indicate that the authors of the review paper relied in part upon the Petitioner's work, they do not support the assertion that they highlight his work or provide commentary that sets it apart as particularly noteworthy or impactful.

For all of the reasons given above, we find that the evidence does not establish that the Petitioner meets this criterion.

*Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media. 8 C.F.R. § 204.5(h)(3)(vi)*

The Petitioner submitted evidence that he has coauthored more than 40 articles which have been published in scientific journals.<sup>4</sup> As such, we agree with the Director and find that he meets this criterion.

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<sup>4</sup> The Director found a discrepancy between the number of articles the Petitioner claimed to have authored and the number as evidenced in the record. On review, we note that the record includes sufficient documentation of the Petitioner's articles, and withdraw this finding by the Director.

*Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.* 8 C.F.R. § 204.5(h)(3)(viii)

While the Petitioner did not address this criterion on appeal, he did submit evidence in response to the Director's RFE. As the Director determined that the Petitioner otherwise met the initial evidence requirement, he did not provide an analysis of the Petitioner's qualification under this criterion in his decision. However, because we have withdrawn the Director's finding regarding published material about the Petitioner, we will now analyze the claims and evidence provided in his response to the RFE.

As we noted when considering the evidence of the Petitioner's participation as a judge of the work of others, he serves as an editor for the journals *Innovare Journal of Health Science* (IJHS) and *Indo Global Journal of Pharmaceutical Sciences* (IGJPS). Regarding his role for IGJPS, the Petitioner submitted evidence that he was named as the journal's [redacted] editor for the United States in [redacted] 2018. A letter from the journal's editor-in-chief states that in this role he "review(s) original papers in the subject of Pharmacy and Pharmacology submitted by other scientists for publication in this journal." In addition, the editor-in-chief indicates that as [redacted] editor, the Petitioner provides guidelines to authors in submitting manuscripts, as well as guidelines "regarding acceptable practices for sharing experimental results and information." He also establishes policies on conflict of interest for authors, reviewers and editors. After review, we find that this evidence establishes that the Petitioner plays a leading role for IGJPS.

However, the Petitioner must also establish that IGJPS has a distinguished reputation. The editor-in-chief described the journal in his letter, stating that the journal had been in publication for more than seven years, and that according to Google Scholar it had an "h-index" of 19 and "i10 index" of 44. However, the letter does not explain the meaning of these values, or provide context to demonstrate that the journal has distinguished itself among other scientific publications. The Petitioner also includes information from the journal's website, but this material simply describes its focus in the areas of pharmacy and pharmaceutical sciences. It does not establish that the journal has earned a distinguished reputation.

Regarding IJMS, the Petitioner provided a copy of a page from the journal's website which lists him as [redacted]. The page indicates that the editorial board consists of an editor-in-chief, an associate editor, the two assistant editors, and twelve editors. A letter from the publisher of this journal states that the Petitioner is responsible to maintain "the smooth flow of manuscripts from the submission to publication teams to the editor." He verifies that articles comply with the journal's manual of style, and assists the editor-in-chief in finalizing author guidelines. He also assigns manuscripts to reviewers, and makes the decision regarding acceptance for publication. As with IGJPS, we find that the Petitioner plays a leading role for IJMS.

As evidence of the reputation of IJMS, the Petitioner submitted pages from the publisher's website about the journal. This evidence indicates that it is a peer-reviewed, bimonthly open access journal that has been in publication since 2013. It also provides information about the publisher, and a list of journals that it publishes. However, it does not include information to show that IJMS has a distinguished reputation among scientific journals.



The Petitioner also submitted evidence showing that he agreed to serve on [redacted]'s Council on [redacted] [redacted]. This evidence indicates that he is one of several faculty members of the [redacted] and that it is responsible to “advise the Chancellor and the Division on issues in the areas of teaching, student life and welfare, and intramural and intercollegiate athletics.” It does not demonstrate that the Petitioner plays a leading or critical role for the [redacted], or that the council enjoys a distinguished reputation.

Accordingly, after review of this evidence, we find that it does not establish that the Petitioner meets this criterion.

### III. CONCLUSION

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

The Petitioner seeks a highly restrictive visa classification. USCIS has long held that even athletes performing at the major league level do not automatically meet the “extraordinary ability” standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm’r 1994). Here, the Petitioner has not shown that the significance of his work is indicative of the required sustained national or international acclaim or that it is consistent with a “career of acclaimed work in the field” as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate that the Petitioner has garnered national or international acclaim in the field, and that he is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2).

For the reasons discussed above, the Petitioner has not demonstrated his eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

**ORDER:** The appeal is dismissed.