



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

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

In Re: 14515168

Date: APR. 15, 2021

Appeal of Texas Service Center Decision

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

The Petitioner, a researcher in the field of neuroscience, 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 record did not establish that the Petitioner met the initial evidence requirement for this classification through either evidence of a major, internationally-recognized award or meeting at least three of the evidentiary criteria under 8 C.F.R. § 204.5(h)(3).

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

international 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 criteria 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).

II. ANALYSIS

The Petitioner is a researcher specializing in the area of neuroscience. He received his Ph.D. in [redacted] Neurobiology from University [redacted] in 2014, and at the time of filing his petition was employed as a postdoctoral research fellow at [redacted]. He states that he plans to continue his research in the field of neuroscience in the United States by applying for academic research positions.

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 two of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), relating to participation as a judge of the work of others and authorship of scholarly articles. On appeal, the Petitioner asserts that he also meets the evidentiary criteria relating to lesser nationally or internationally recognized awards and contributions of major significance to the field of endeavor. After reviewing all of the evidence in the record, we find that although he meets the initial evidentiary requirement for this classification, he has not established sustained national or international acclaim and that he is one of the small percentage of researchers at the top of his field.

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. 8 C.F.R. § 204.5(h)(3)(i)

The Petitioner initially submitted evidence of several types of awards he received, including a scholarship, a fellowship, and an award for an outreach project he conducted. In responding to the Director's request for evidence (RFE), he primarily focused on his receipt in 2016 of the Early Career Investigator Award from [redacted]. The Director noted the additional evidence submitted, which included information about previous winners of the award, but concluded that since the award is limited to members of [redacted] it did not show that the award is nationally or internationally recognized.

On appeal, the Petitioner focuses on the reputation of [redacted] and refers to seven new reference letters submitted on appeal. Where 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. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). Here, since the Director requested further documentation showing that this award was nationally or internationally recognized in his RFE, we will not consider these new reference letters. However, we note that in responding to that RFE, the Petitioner referred to a letter from [redacted] of the [redacted] College of Surgeons [redacted] who reiterates much of the information presented on the submitted pages from [redacted]'s website and also states a number of factors that led to the Petitioner's receipt of the Early Career Investigator Award. In addition, both this letter and [redacted]'s website note that [redacted] is the national neuroscience society [redacted] and represents the country in the Federation of European Neuroscience Societies. As this evidence demonstrates that [redacted] is [redacted]'s leading professional association in the Petitioner's field, it establishes that the Early Career Investigator Award is recognized at the national level in that field. Therefore, we disagree with the Director and conclude that the Petitioner has met 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 record includes letters from the editors of scientific journals, including *The European Journal of Neuroscience*, *Journal of Neural Regenerative Research*, and *Frontiers*, which verify that the Petitioner has served as a peer reviewer for those journals. Accordingly, we agree with the Director 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)

In support of this criterion, the Petitioner submitted the title pages of more than 20 research articles he authored which were published in scientific journals. Additional evidence shows that he has also presented papers at scientific conferences. As such, we agree that the Petitioner has established that he meets this criterion.

B. Final Merits Determination

As discussed above, the Petitioner has established that he meets the requisite three criteria, and therefore meets the initial evidentiary requirement for this classification. Although he also claims to meet a fourth criterion, relating to original contributions of major significance in his field, we need not consider whether he meets additional criteria. Rather, we will analyze the evidence of any original contributions the Petitioner has made together with the balance of the record in conducting a final merits determination.

In a final merits determination, we examine and weigh the totality of the evidence to determine whether the Petitioner has sustained national or international acclaim and is one of the small percentage at the very top of the field of endeavor, and that his achievements have been recognized in

the field through extensive documentation. Here, the Petitioner has not offered sufficient evidence that he meets that standard.

On appeal, the Petitioner does not go into great detail concerning his sustained national or international acclaim as a neuroscience researcher or his standing as one of the small percentage at the top of that field, but briefly asserts that his receipt of awards and his original contributions of major significance are sufficient to meet those standards. In responding to the Director's RFE, he emphasized the importance of metrics and statistics based upon the total number of citations to his journal articles when discussing the importance of his contributions, as well as within the final merits determination. Further, when discussing the impact of his scholarly publications in scientific journals on appeal, he also refers back to these metrics and statistics, and asserts that the Director failed to give them sufficient weight in his decision. We will therefore begin with a review of that evidence and the assertions made by the Petitioner based upon it.

The Petitioner initially submitted evidence of his papers which were published in scientific journals, as well as the number of citations to those papers, from his profile page on Google Scholar. In his RFE response, he asserts that the rate at which his papers have been cited in comparison to others in his field shows that his work "has been widely cited in his field, which shows that his original work was directly implemented by others and of major significance to them." He specifically refers to a report in the record from Clarivate Analytics and asserts that it demonstrates his citation rate "is well within the Top 5% citation rate within the entire field of Neuroscience... and is 4 times greater than the average citation rate of neuroscience researchers." Both of these claims are based upon a comparison of the Petitioner's "impact factor" in the years 2014-2016, calculated using citations to 10 of his papers published between 2013-2016, to the 2017 impact factors of 261 scientific journals that publish articles in the field of neuroscience.

However, these conclusions made by the Petitioner are not supported by the statistics and metrics he has included in the record. Most importantly, the Petitioner is claiming that his citation rate is among the top 5% in his field based upon a comparison not to the impact factor of other researchers, but to that of scientific journals. He does not explain how such a comparison of two completely different sets of data leads to his conclusion, or why it supports his assertion that he is one of the small percentage of neuroscience researchers at the top of the field. Similarly, his statement that his citation rate is four times greater than the citation rate of other neuroscience researchers is based upon a comparison of the average citation rate for neuroscience papers, not that of individual researchers, and therefore does not take into account the many factors that differentiate these figures, including that papers typically have multiple authors. Again, the Petitioner does not explain the relevance of this comparison or that it supports either his conclusion or his eligibility as an individual of extraordinary ability.

In addition, the usefulness of the comparisons suggested by the Clarivate Analytics report is put into question by other evidence in the record. A paper published in the journal *Scientometrics* on February 29, 2012 describes and defends what is referred to as the "Garfield impact factor" as a means of "representing the relative contribution of journals to the total impact of information in a field," and stresses that "[T]he use of GF (e.g. for evaluation purposes) should not be extended from the journal to the authors of papers," as the Petitioner does in reaching his conclusions. Also, [redacted] states that he disagrees that "the comparison of average citation rates per year between [the

Petitioner's] publications and other researchers in the field does not show that [the Petitioner's] work has been highly influential..." As noted, the comparison made by the Petitioner is not between his citation rate and that of other researchers, but between his citation rate and the impact factor of scientific journals. While both the total number and rate of citations to a researcher's published work are factors that may be considered in determining his or her acclaim and standing within the field, the statistics and metrics provided here, and the conclusions the Petitioner draws from them, do not provide an accurate or complete picture of his relative acclaim and standing in his field.

On appeal, the Petitioner also focuses on the impact of individual papers he authored in addressing the significance of his contributions to the field of neuroscience. For four of those papers, he provides a brief summary, the impact factor of the journals in which they were published, and the number of other published papers which cite to them. He then refers to previously submitted reference letters which describe this research and its impact on the field. The first of these was written by [redacted] of [redacted] who has known him throughout his academic career and supervised his doctoral work. She states that during his time in her lab, the Petitioner "discovered the [redacted] that specifically [redacted] which will be essential to the further development of this approach as a [redacted] therapy." The Petitioner notes that this research was reported in a paper in the journal *Molecular and Cellular Neuroscience* in 2013, which had been cited to on more than 40 occasions at the time the petition was filed.

Another letter referencing this same research was submitted by [redacted] of the University of [redacted] who states that it was a "major contribution to the field of [redacted] and "has received international acclaim and many citations in research papers, including those from my lab." However, he does not specify how the Petitioner's research has impacted his lab's research, or how his publication of "a recent important research review" evidences his international acclaim.

Reference letters addressing another aspect of the Petitioner's research were written by [redacted] of [redacted] University of Applied Sciences [redacted] and [redacted] of the University of [redacted]. [redacted] writes that the Petitioner's "extensive research into [redacted] in [redacted] neuron development ... has been truly groundbreaking." She further states that her research group built on this research which led to a published research paper, and concludes that the Petitioner's research "has and will serve as the basis for important further work that could lead to an effective [redacted] therapy for [redacted]" [redacted] writes that the Petitioner's finding "that [redacted] regulates the development of [redacted]" was novel and has since been duplicated, and represents "an important paradigm shift in our understanding of this complex developmental process that will shape the future direction of this field and my own lab."

The letters also note that the Petitioner has co-authored several review articles which were published in scientific journals, which account for four of his five most highly cited publications. [redacted] states that one such review article "has become an essential resource for our field." In his letter, [redacted] writes that "[B]y comprehensively reviewing and analyzing broad areas of neuroscience research, [the Petitioner] has provided the field with invaluable sources of information on essential research areas." Another letter, submitted by an associate editor for *Journal of Neural Regenerative Research*, indicates that from 2014-15, one of the review articles co-authored by the

Petitioner was the most cited article in the journal. We note that Clarivate Analytics, the source of the impact factor metrics analyzed above, notes on its website that “Review articles generally are cited more frequently than typical research articles because they often serve as surrogates for earlier literature ...”¹

These letters indicate that the Petitioner’s doctoral and post-doctoral research is original and has added to the understanding of processes related to [REDACTED], allowing his fellow researchers in the field to build upon his work. In addition, as noted above, this work was recognized at the national level in 2016 through his receipt of the Early Career Investigator Award from [REDACTED]. Also, the evidence indicates that his review articles have successfully compiled and analyzed the existing research in neuroscience in a way that other researchers have found to be useful. However, this evidence does not demonstrate that this work has placed him among the very small percentage of neuroscience researchers at the top of this field. Although the record shows that his work has been cited by other researchers in his field, the documentary information concerning impact factors emphasized by the Petitioner, analyzed above, is insufficient to establish that either the rate or total number of citations to his published research papers elevates his standing in the field to that level. And the award which recognized the excellence of his work at [REDACTED] specifically excludes more experienced researchers who may have spent years making contributions to the field of neuroscience.

In addition, the record does not include evidence showing that his more recent work since joining [REDACTED] as a research fellow in 2017 has received a similar level of acclaim. A letter from [REDACTED] of [REDACTED] states that he has not worked with the Petitioner, but knows of his work in another lab at the school and provides a brief description. He describes this current research as “promising” and concludes that “it is likely that his work will lead to important advances in the field,” but does not indicate that the Petitioner’s recent work has already garnered acclaim at the national or international level.

Further, the evidence regarding the Petitioner’s service as a peer reviewer for three journals verifies his expertise as researcher in the field of neuroscience, but does not demonstrate that such a role is indicative of widespread acclaim or elevated standing within his field. A reference letter from the [REDACTED] *The European Journal of Neuroscience* notes that “we heavily rely on able and willing scientists to partake in the peer-review system,” and that the Petitioner is a “well-qualified reviewer.” Similarly, [REDACTED] for the *Journal of Neural Regenerative Research* writes that the Petitioner was invited to review two manuscripts, and states that they are grateful to him for contributing his time and effort. Both of these letters demonstrate the voluntary nature of peer review work, and show that the Petitioner was recognized as a qualified expert in his field but not as one of the small percentage of neuroscience researchers at the top of the field.

The record establishes that the Petitioner has been a productive researcher who has garnered acclaim at the national level for his doctoral research, but does not establish that a similar level of acclaim has been associated with his more recent work. It also does not show that his overall body of work thus far in his career places him among top researchers in the field of neuroscience. He seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather

¹“The Clarivate Analytics Impact Factor,” accessed at [6](https://clarivate.com/webofsciencegroup/essays/impact-factor/#:~:text=The%20annual%20JCR%20impact%20factor,years%20(see%20Figure%201) on April 9, 2021.</p></div><div data-bbox=)

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 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.