U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 17944404

Date: AUG. 19, 2021

Appeal of Nebraska Service Center Decision

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

The Petitioner, a research scientist in the field of chemistry, seeks classification as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner established that he met only one of the ten initial evidentiary criteria for the requested classification, of which he must meet at least three.

On appeal, the Petitioner claims that he meets three additional evidentiary criteria and is otherwise eligible for the benefit sought.

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)(A) 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).

II. ANALYSIS

The Petitioner indicates employment since 2018 as a senior scientist with the [redacted] company [redacted] in [redacted] California. The record reflects that he holds a Ph.D. in chemistry from [redacted] University.

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 determined that the Petitioner met one of the evidentiary criteria, related to scholarly articles. We agree. The record reflects that the Petitioner has authored articles published in professional publications including *Science, Nature Energy, and Joule*, thus satisfying the criterion at 8 C.F.R. § 204.5(h)(3)(vi). On appeal, the Petitioner asserts that the Director erred in concluding that he did not satisfy the evidentiary criteria relating to published material, original contributions, and leading or critical role at 8 C.F.R. § 204.5(h)(3)(iii), (v), and (viii), respectively. After reviewing all of the evidence in the record, we find that the Petitioner does not satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i) – (x), as required.

> *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 Director acknowledged that the Petitioner submitted several articles, however, he determined that the articles are primarily about two of the Petitioner's published works rather than about the Petitioner. On appeal, the Petitioner maintains that the submitted online articles satisfy this criterion, as they "are about [the Petitioner] and his team, covering work that is extensively credited to him throughout the

Initial Filing and the Request for Evidence." In order to satisfy this criterion, the Petitioner must demonstrate published material about him in professional or major trade publications or other major media, as well as the title, date, and author of the material.[1]

The Petitioner provided several online articles dated 2015 by Scientific American (www.scientificaamerican.com, citing *Chemistry World* as its source), Forbes (www.forbes.com), National Geographic (www.news.nationalgeographic.com), Science Daily (www.sciencedaily.com), (e) Science News (esciencenews.com), and United Press International (www.upi.com). Although the articles are about the Petitioner's research in his 2015 *Science* article regarding the development of an [redacted] the articles are not about him. Instead, the Petitioner is briefly mentioned in the articles from Science Daily, (e) Science News, and United Press International, as discovering the new [redacted] as a graduate student at [redacted] working with post-doctoral fellow [redacted] and [redacted]. The Petitioner is never mentioned in the body of the articles from Scientific American, Forbes, and National Geographic. The regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires the published material to be about the alien relating to his work rather than articles reporting on his work. Articles that are not about an alien do not fulfill 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 regarding a show are not about the actor). Further, the items from Science Daily and (e) Science News do not include the "author of the material," as required by the regulation at 8 C.F.R. § 204.5(h)(3)(iii).

The record contains several additional online articles dated 2016 published by Science Daily (www.sciencedaily.com), Engadget (www.engadget.com), News Atlas (www.newsatlas.com), Yahoo News Singapore (www.sg.news.yahoo.com), Financial Express (www.financialexpress.com), and Research & Development World (www.rdmag.com, citing Engadget and Harvard Gazette as sources). Although the articles are about the Petitioner's research in his 2016 *Nature Energy* article regarding the development of a [redacted], the articles are not about him. Instead, the articles briefly mention the Petitioner as the article's first author and contain the same quote from the Petitioner, stating that the research team "[redacted]" but ended up developing a new class of [redacted] that should be simple to make and inexpensive to manufacture in large quantities. Although he is referenced, the articles are not about the Petitioner and do not otherwise meet this regulatory criterion. Here, again, the Petitioner provided articles only about his work instead of articles about him relating to his work. In addition, the Petitioner is never mentioned in the body of the articles from News Atlas and Research & Development World. Further, the items from Science Daily, Yahoo News Singapore, and Financial Express do not include the author of the material, as required.

Moreover, none of the aforementioned articles was accompanied by supporting evidence demonstrating that they were published in professional or major trade publications or other major media. For these reasons, the Petitioner did not demonstrate that he fulfills this criterion.

[1] *See* 6 *USCIS Policy Manual* F.2 appendix, https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-2 (providing guidance on the review of evidence submitted to satisfy the regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x)).

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 meet this criterion, a petitioner must establish that not only has he made original contributions but that they have been of major significance in the field.[2] 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. The Petitioner claims that he has made original contributions of major significance in the field, as evidenced by his published research, citation record, letters from experts in the field, patent applications, and other evidence.

Although the Petitioner provided evidence reflecting the originality of his research through recommendation letters praising him for his contributions, the authors do not provide specific examples of contributions that are indicative of major significance.[3] In general, the letters recount the Petitioner's research and findings, indicate their publication in journals, and point to the citation of his work by others. Although they reflect the novelty of his work, they do not show how his research and findings have been considered of such importance and how their impact on the field rises to the level required by this criterion.

[redacted] a professor of chemistry and materials science at [redacted] University, indicates that the Petitioner's work as a Ph.D. student with his research group built on his team's prior discovery of a [redacted] that displayed better performance than metal ions currently in use in [redacted] He explains that the Petitioner's published papers reported on the first high-performance and non-toxic [redacted] based on [redacted] Specifically, the Petitioner's article in *Science* reported on the use of [redacted] in the existing [redacted] while his subsequent articles in *Nature Energy* and *Joule* demonstrated, respectively, high-performance [redacted] based on a new family of [redacted] called [redacted] and even lower [redacted] materials. He provides that a separate team at [redacted] built upon the Petitioner's work and showed that it is possible to implement a much cheaper [redacted] into [redacted] without compromising performance. [redacted] asserts that leading [redacted] technology companies, such as [redacted], and [redacted] have expressed interest in "potential commercialization of [the Petitioner's] novel [redacted] chemistry." While [redacted] describes the originality of the Petitioner's research findings and indicates they have generated commercial interest he does not discuss in detail how the work has already remarkably impacted the field or provide examples of specific applications attributed to the Petitioner's work.

The Petitioner provided letters from representatives of several companies with interest in his novel [redacted] chemistry. For instance [redacted], CTO of [redacted] indicates that based upon the Petitioner's *Nature Energy* article he collaborated with the Petitioner's Ph.D. advisors on a recently completed [redacted] project to develop lower cost membranes for the next-generation of [redacted]. [redacted], a senior researcher at [redacted]

[2] *See* 6 *USCIS Policy Manual*, *supra*, at F.2 appendix (stating that although funded and published work may be "original," this fact alone is not sufficient to establish that the work is of major significance).

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

(Japan), indicates his company has been testing the Petitioner's [redacted] technology "for commercialization purposes" and that the Petitioner's [redacted] chemistry "is positioned to reduce the cost of the entire [redacted] system." [redacted] indicates he cited to the Petitioner's *Science* article and used the Petitioner's [redacted] design idea as part of his own published study of a [redacted] based on [redacted]

Similarly, [redacted] at the University of [redacted] indicates he cited to the Petitioner's *Science* article in his own work in 2017, which verified that employment of [redacted] molecules significantly enhanced the [redacted] in comparison to conventional metal ion-based systems. He provides examples of the "novel [redacted] concepts" of research teams in Denmark and Switzerland who have cited to the Petitioner's work." However, neither [redacted], nor [redacted] further elaborated or discussed whether the Petitioner's findings have been implemented beyond informing the research of other scientists in the same field, and if so, the extent of their application. They did not specify how the Petitioner's research toward the development and commercialization of [redacted] based on [redacted] is deemed a majorly significant contribution to the field.

An additional letter from [redacted] a professor at [redacted] University [redacted] asserts that the Petitioner's work "has changed the direction of [redacted] research" and "guided some of my own research as well as that of my colleagues." [redacted] states that he cited to the Petitioner's articles published in *Science* and *Nature Energy* in his 2017 review article titled [redacted] published in *ACS Energy Letters*. He explains that his review article "evaluated [redacted] technologies ranging from early [redacted] systems . . . to more recent systems based on [redacted], such as the ones developed by [the Petitioner] and his team," and he chose to highlight the work of the Petitioner and his team published in *Science* "as he made useful contributions to our understanding of [redacted]" specifically, how an [redacted] "reaches up to a high cell voltage of 1.2V." Although [redacted] describes the Petitioner's research as "groundbreaking" and having "changed the direction of [redacted] research" he has not sufficiently detailed in what ways the Petitioner has advanced the state of research in his field or already remarkably impacted their shared field, or provided examples of specific applications attributed to the Petitioner's work.

Finally, the Petitioner provided two letters from the Petitioner's employer, [redacted] Within its initial submission, the Petitioner submitted a letter from [redacted] s CEO, who credits the Petitioner with leading the company's [redacted] R&D effort in designing components of its [redacted] technology, the [redacted], which he claims is "poised to completely redefine the technologies available on the market today." He states that the Petitioner improved the company's original [redacted] design, adding [redacted], [redacted] chemicals, and [redacted] to increase the commercial [redacted] cycle life. He asserts that, with the Petitioner's expertise, the company's [redacted] technology is "the most advanced [redacted] technology that is commercially available" and "is proving immensely popular with companies that are developing next-generation mobility applications." He claims that [redacted] is partnering the [redacted] and [redacted] on supplying [redacted] program, working with leading companies in the [redacted] industry, and that its [redacted] was selected to be incorporated into the next-generation [redacted] technologies. He indicates that

[redacted] is in discussions with [redacted] manufacturers to explore their interest in licensing and potentially acquiring its [redacted] technology.

Within the Petitioner's response to the Director's request for evidence (RFE), the Petitioner provided an additional letter from [redacted] in which he asserts that in June 2020, the performance of the technology developed by the Petitioner for [redacted] was "validated to be more successful than every other recent [redacted] advancement on the market" based on testing performed by the Department of Energy (DOE) and [redacted], and that in August 2020 [redacted] was acquired by [redacted] "the biggest [redacted] in the EU," based upon the Petitioner's novel [redacted] contributions.

We note that the DOE [redacted] testing and the acquisition of [redacted] by [redacted] occurred after the initial filing of the petition. *See* 8 C.F.R. § 103.2(b)(1). Regardless, the Petitioner did not demonstrate that a company's negotiation to potentially commercialize his research demonstrates that the field already recognizes his work as being majorly significant. Nor did the Petitioner show that the commercialization of research work by companies automatically evidences contributions of major significance in the field. Even if [redacted], [redacted], or [redacted] commercialized the Petitioner's inventions, he did not establish the impact or influence of his work in the overall field rather than limited to the company. In addition, the Petitioner did not demonstrate the result of those companies' commercialization, such as high sales or widespread usability of a product or application. Although others opine that the Petitioner's work shows promise, the Petitioner did not demonstrate how his work already qualifies as a contribution of major significance in the field, rather than prospective, potential impacts. Here, the significant nature of his novel [redacted] contributions has yet to be determined.

The letters considered above primarily contain attestations of the novelty and utility of the Petitioner's research studies without providing specific examples of contributions that rise to a level consistent with major significance. Letters that specifically articulate how a petitioner's contributions are of major significance to the field and its impact on subsequent work add value.[4] Letters that lack specifics and use hyperbolic language do not add value and are not considered to be probative evidence that may form the basis for meeting this criterion.[5] 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). The authors' assertions in the above-referenced letters do not explain how the Petitioner's research findings have been widely implemented or relied upon by others in the field or establish that the Petitioner's work has had a demonstrable impact on the field as a whole commensurate with a contribution of major significance.

Regarding his patent applications, the Petitioner submitted evidence showing he is a co-inventor on two patent applications, for a [redacted] and a [redacted] respectively. In general, a patent 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 patent applications show the originality of his work, but they did not demonstrate that it resulted in a contribution of major significance in the field.

[4] *See* 6 *USCIS Policy Manual*, *supra*, at F.2 appendix.
[5] *Id.*

The Petitioner also submits his publication and citation record from Google Scholar. Regarding his citations, the Petitioner initially provided evidence from *Google Scholar* reflecting 884 cumulative citations. Specifically, the record shows that his four highest cited articles received 422 (*Science*), 179 (*Nature Energy*), 124 (*Nature Materials*), and 60 (*Joule*), citations, respectively.[6] This evidence, however, does not show that the impact of his work on the overall field of chemistry rises to the level of an original contribution of major significance. Citation to one's work alone is insufficient under 8 C.F.R. § 204.5(h)(3)(v) absent evidence that they were of "major significance," as a citation ranking does not provide sufficient context to determine the impact or importance of a given researcher's work in the field. [7] Rather, we must consider whether the Petitioner's articles "have provoked widespread commentary or received notice from others working in the field, or entries (particularly a goodly number) in a citation index which cite [his] work as authoritative in the field."[8]

The Petitioner has presented samples of articles that have cited to his work. A review of those articles, though, does not show the significance of the Petitioner's research to the overall field beyond the authors who cited to his work. For instance, the Petitioner provided a partial article titled, [redacted] (*Joule*), in which the authors cited to his 2016 *Nature Energy* article.[9] However, the article does not distinguish or highlight the Petitioner's written work from the over 63 other cited papers. Here, the Petitioner has not shown how any of his published articles have an impact that rises to the level of "major significance" consistent with this regulatory criterion.

The Petitioner also emphasizes that his publications have been cited in several review articles. One of the submitted partial review articles, titled [redacted] (*Angewandte Chemie*), cites to the Petitioner's 2015 *Science* article among at least 176 other articles. While the inclusion of the Petitioner's research in this and other review articles is noted, and the evidence indicates that the Petitioner has made original contributions to what appears to be a very active field of research, we cannot determine that every publication cited in a review article is indicative of an individual contribution of major significance, and the evidence does not distinguish the Petitioner's publications from the many others cited.

Moreover, the Petitioner has not established, as asserted, that publication of his articles in highly ranked journals, as well as presentations at reputable conferences, establish that the field considers his research to be an original contribution of major significance. A publication that bears a high ranking or impact factor is reflective of the publication's overall citation rate. It does not show an author's influence or the impact of research on the field or that every article published in a highly ranked journal automatically indicates a contribution of major significance. Publications and presentations are not

[6] The Petitioner's remaining three articles and two patent applications, published between 2013 and 2019, garnered between 1 and 40 citations.

[7] Further, we note that evidence that summarizes citations to the Petitioner's entire body of published work does not demonstrate that any specific work of his is so widely cited and relied upon that it is considered to have made a major impact in his field. Comparison of the Petitioner's cumulative citations to others in the field is often more appropriate in determining whether the record shows sustained national or international acclaim and demonstrates that he is among the small percentage at the very top of the field of endeavor in a final merits determination.

[8] *See* 6 *USCIS Policy Manual*, *supra*, at F.2 appendix.

[9] Although we discuss a sample article, we have reviewed and considered each one.

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 at 1036, *aff'd in part*, 596 F.3d at 1115. Here, the Petitioner has not established that publication in a popular or highly ranked journal alone demonstrates a contribution of major significance in the field.

On appeal, the Petitioner refers to our non-precedent decision concerning a virologist who petitioned under this classification. This decision was not published as a precedent and therefore does not bind USCIS officers in future adjudications. See 8 C.F.R. § 103.3(c). Non-precedent decisions apply existing law and policy to the specific facts of the individual case and may be distinguishable based on the evidence in the record of proceedings, the issues considered, and applicable law and policy. Nevertheless, we note that the Petitioner emphasizes that, in the referenced decision, "the petitioner demonstrated his significant contributions through reference letters describing their use and implementation in the field, and corroborating documentation." We agree that the non-precedent decision highlights the fact that we placed significant weight on the statements of experts who clearly described how the petitioner's scientific contributions were both original and of major significance in their field. However, for the reasons discussed previously, the expert opinion letters submitted in this matter did not contain sufficient probative analysis to establish that the Petitioner's research findings, individually or collectively, have remarkably impacted or influenced his field.

The Petitioner also maintains on appeal that reports by media outlets demonstrate that he "has made significant contributions to his field." As discussed previously, the record contains several articles, some of which briefly mention the Petitioner, that discuss some of his teams' research findings. For example, online articles from Scientific American, National Geographic, and (e) Science News, report the findings of his *Science* article regarding the development of [redacted] at the time of the publication of that work in September 2015. Additional online articles by Science Daily, Engadget, and Research & Development World report the findings of the Petitioner's *Nature Energy* article regarding the development of a [redacted] at the time of the publication of that work in July 2016. The Petitioner did not show, however, that such limited media coverage indicates an original contribution of major significance in the field. For example, it did not demonstrate that the Petitioner's research and findings resulted in widespread coverage and interest.

Considered together, the evidence consisting of the citations to the Petitioner's published findings, patent applications, citation statistics, and the reference letters from his fellow chemists and other experts, establishes that the Petitioner has been productive, and that his published data and findings have been relied upon by others in their own research. It does not demonstrate that the Petitioner has made a contribution of major significance in the field of chemistry. Therefore, he has not met this criterion.

III. CONCLUSION

We find that although the Petitioner satisfies the scholarly articles criterion, he does not meet the claimed criteria regarding published material and original contributions of major significance. While he argues and submits evidence for one additional criterion on appeal, relating to leading or critical role for organizations or establishments at C.F.R. § 204.5(h)(3)(viii), we need not reach this additional ground. As the Petitioner cannot fulfill the initial evidentiary requirement of three criteria under

8 C.F.R. § 204.5(h)(3), we reserve this issue.[10] Accordingly, 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 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.

[10] *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach).