



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

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

In Re: 19547559

Date: AUG. 27, 2021

Appeal of Nebraska Service Center Decision

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

The Petitioner seeks classification as an alien of extraordinary ability in biophysics and biomedicine. *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.

In a decision dated September 11, 2019, the Director of the Nebraska Service Center denied the petition, concluding that the Petitioner had not satisfied any of the initial evidentiary criteria, of which he must meet at least three. On July 21, 2020, we dismissed the Petitioner's appeal. The Petitioner subsequently filed a complaint in the United States District Court for the Northern District of California, which granted the Petitioner's motion for summary judgment, and remanded for further proceedings consistent with their opinion. [REDACTED]

[REDACTED] Specifically, the Court concluded that the record established that the Petitioner satisfied the initial evidentiary requirements and remanded the matter to us to evaluate the totality of the evidence in the context of a final merits determination.

Upon consideration of the Court's opinion and the arguments and evidence in the record of proceeding, we will sustain 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). The regulation at 8 C.F.R. § 204.5(h)(4) allows a petitioner to submit comparable material if he or she is able to demonstrate that the standards at 8 C.F.R. § 204.5(h)(3)(i)-(x) do not readily apply to the individual’s occupation.

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

A. Procedural History

The Petitioner indicates he is the founder and chief executive officer of [redacted] where his work involves “innovating with technical applications across Biophysics and Biomedicine.” Because the Petitioner concedes that he has not 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 did not fulfill any of the initial evidentiary criteria.

On appeal, the Petitioner asserted that he met five criteria, including through the submission of comparable evidence. In our prior decision we determined that the Petitioner did not demonstrate that he meets the criteria related to awards under 8 C.F.R. § 204.5(h)(3)(i), published materials under 8 C.F.R. § 204.5(h)(3)(iii), and original contributions under 8 C.F.R. § 204.5(h)(3)(v). As we concluded that the Petitioner was unable to fulfill at least three criteria, we reserved a determination on the criteria related to scholarly articles at 8 C.F.R. § 204.5(h)(3)(vi) and leading or critical role at 8 C.F.R. § 204.5(h)(3)(viii) and did not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20.

The Court concluded that we erred in our determination, finding that the Petitioner submitted evidence sufficient to establish that he meets the criteria relating to awards, published materials, and original contributions. The Court found no error in our determination that the Petitioner did not meet his burden to demonstrate that he may use comparable evidence to demonstrate his eligibility.¹ Further,

¹ In addition, the Court determined that because the Petitioner did not contest on appeal the Director’s determination that he did not establish that he meets the criterion related to high salary at 8 C.F.R. § 204.5(h)(3)(ix) it would not consider the Petitioner’s argument on this issue.

the Court analyzed the documentation submitted under the criteria related to scholarly articles at 8 C.F.R. § 204.5(h)(3)(vi) and leading or critical role at 8 C.F.R. § 204.5(h)(3)(viii), finding that the Petitioner met the scholarly articles criterion but did not satisfy the leading or critical role criterion. In sum, the Court concluded that the Petitioner fulfilled step one of the *Kazarian* framework because he fulfilled the regulatory requirements of four criteria. The Court remanded the case to us to evaluate the totality of the evidence in the context of a final merits determination.²

B. Final Merits Determination

As the Petitioner has submitted the requisite initial evidence, we will evaluate whether he has demonstrated, by a preponderance of the evidence, his sustained national or international acclaim, that he 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. In a final merits determination, we analyze a petitioner's accomplishments and weigh the totality of the evidence to determine if his successes are sufficient to demonstrate that he has extraordinary ability in the field of endeavor. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20.³ Accordingly, we have analyzed the record in its entirety, which includes other relevant evidence such as the Petitioner's scholarly articles and leading or critical role. In this matter, we determine that the Petitioner has demonstrated his eligibility.

In the present matter, the Petitioner has submitted extensive documentation of his achievements in the biophysics and biomedicine fields and has demonstrated a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990). The evidence provided, in the aggregate, is sufficient to demonstrate the Petitioner's sustained national and international acclaim as a biophysics and biomedicine researcher, scientist, and clinician, and as a biophysicist chief executive officer, and that his achievements have been recognized in the field of expertise. In addition, the submitted documentation shows that the Petitioner is among that small percentage who has risen to the very top of the field of endeavor. The Petitioner has authored a substantial number of articles in distinguished journals and conference proceedings that have garnered a large number of citations, some of which apply and build upon his work, for instance, in the area of [REDACTED] [REDACTED]. *See Kazarian*, 596 F.3d at 1121 (citations may be relevant to the final merits determination of whether an individual is at the very top of the field).⁴ Further, the Petitioner submitted reference letters from experts in the field, detailing his specific contributions and explaining how those contributions are of major significance in his field. For example, [REDACTED] in discussing examples of the Petitioner's specific achievements and their impact on the field, stated that the Petitioner's patented [REDACTED] obtained "the first positive result in a relevant [REDACTED] model" and his work in [REDACTED] "is now a recognized approach at research agencies both in the

² *See* 6 USCIS Policy Manual F.2, <https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-2> (providing that objectively meeting the regulatory criteria in part one alone does not establish that an individual meets the requirements for classification as an individual of extraordinary ability under section 203(b)(1)(A) of the Act).

³ *Id.* (stating that USCIS officers should then evaluate the evidence together when considering the petition in its entirety to determine if the petitioner has established by a preponderance of the evidence the required high level of expertise of the immigrant classification).

⁴ The Petitioner submitted a user profile from ResearchGate at the time of filing, indicating that his 68 publications had been cited 2,204 times in total. Within his response to the Director's request for evidence, the Petitioner provided a citation summary from Google Scholar showing 2,886 total citations.

E.U. and the U.S.” While we need not accept unsupported conclusory assertions,⁵ the evidence of record, including evidence not discussed in this decision, supports these conclusions.

Moreover, the record contains articles about the Petitioner relating to his work in the field that appeared in professional publications dedicated to the business technology or biometrics industry. Given the Petitioner’s area of claimed extraordinary ability, being featured in such publications with references such as [REDACTED] is indicative of his acclaim. Further, the record shows that in his role as chief executive officer of the start-up [REDACTED] the Petitioner’s patents have resulted in the company being awarded a relatively high amount of venture capital investment from [REDACTED], based on the importance of his work in the field as the inventor of the [REDACTED] identity validation technology. Similarly, as chief integration officer at the [REDACTED], the Petitioner’s patents resulted in a significant amount of angel investor and venture capital funding for its [REDACTED] handheld health monitoring device and its in-home [REDACTED] test system, with the latter obtaining approval by the U.S. Food and Drug Administration and entering the market. We find that the relatively high funding amounts based on the importance of the Petitioner’s past and ongoing work in the field, from entities that the record indicates have a history of funding startups that have achieved success, is also evidence of his acclaim.

In light of the evidence discussed above and other corroborating evidence of record, the Petitioner’s achievements are commensurate with sustained national and international acclaim at the very top of his field.

III. CONCLUSION

The Petitioner has submitted evidence qualifying under at least three of the ten categories of evidence and established a “level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor” and “sustained national or international acclaim.” The Petitioner’s achievements have been recognized in his field of expertise and he has established that he seeks to continue working in the same field in the United States. The Petitioner has shown that his entry into the United States will substantially benefit prospectively the United States. He therefore qualifies for classification as an individual of extraordinary ability.

ORDER: The appeal is sustained.

⁵ See *1756, Inc. v. The Attorney General of the United States*, 745 F. Supp. 9, 15 (D.C. Dist. 1990).