



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

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

In Re: 13189490

Date: FEB. 26, 2021

Appeal of Texas Service Center Decision

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

The Petitioner, a chemistry researcher, 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 Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner had satisfied at least three of ten initial evidentiary criteria, as required. The Director also concluded that the Petitioner did not establish that his entry into the United States will substantially benefit prospectively the United States. The matter is now before us on appeal.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. 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 immigrant visas available to aliens 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 previously worked as a researcher at universities in India and Korea, and a pharmaceutical company in India. At the time he filed the petition, the Petitioner was a research associate at the University of [REDACTED]. The Petitioner asserted his intention to remain at [REDACTED] permanently if the petition were approved, but he did not submit evidence from [REDACTED] confirming that the employer considered the position to be permanent. Six months after filing the petition, the Petitioner left [REDACTED] for a position as a postdoctoral research instructor at the University of [REDACTED].

Because the Petitioner has not indicated or shown that he 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 Petitioner initially claimed to have satisfied three of these criteria, summarized below:

- (iv), Participation as a judge of the work of others;
- (v), Original contributions of major significance; and
- (vi), Authorship of scholarly articles.

The Director concluded that the Petitioner met two of the criteria, numbered (iv) and (vi). On appeal, the Petitioner asserts that he also meets the other claimed criterion, numbered (v).

Upon review of the record, as discussed below, we agree with the Director that the Petitioner has satisfied the criteria numbered (iv) and (vi), but not (v).

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 denying the petition, the Director stated that, while the Petitioner submitted detailed descriptions of his original contributions, the record does not establish the major significance of those contributions. Therefore, we will concentrate here on the question of major significance, rather than on the sometimes highly technical details of the Petitioner's contributions. We note that those technical details derive

largely from a series of letters in the record. The Petitioner asserts that these letters are of independent origin, but several of them are formatted in a manner similar or identical to the lengthy introductory letter submitted with the petition, sometimes with the same wording. For instance, five of the letters include the following section headings relating to the Petitioner's work at [redacted] University:

Project #1: [redacted] analogues with potent anti-[redacted] activity

Project #2: Synthesis of compounds as [redacted] signaling blockers for the treatment of Rheumatoid arthritis and inflammation

Project #3: Discovery of a novel series of [redacted] derivatives as [redacted] [redacted] inhibitors

In four instances, the word "Rheumatoid" is arbitrarily capitalized, as above. Five letters also include the same misspelling, indicating that the Petitioner "published his findings in the *Bullet [sic] of the Korean Chemical Society*." The similarities in language strongly suggest a common author, whom we can infer to be the Petitioner himself.¹

The Petitioner highlights five points on appeal, some more specific than others:

- Petitioner has an outstanding record of peer review activity, indicating that he is widely recognized to have made significant contributions to his field;
- Petitioner's research work has resulted in three patents, one of which has been assigned to a third-party company for commercial development;
- Petitioner developed the first and only synthetic inhibitor [redacted] the compound [redacted] which is sold by biotechnology companies around the world for use in scientific research;
- Petitioner's publications have been highly cited by others working in his field;
- Nine of Petitioner's publications were featured in [redacted] which had the stated goal of highlighting the most important and innovative reactions developed in organic, bioorganic, medicinal, inorganic, and organometallic chemistry.

Here, we address each of these points.

Peer review: The Petitioner does not submit documentary evidence – existing separately from the petition – to show that the journals' publishers limit peer review activity to those who are "widely recognized to have made significant contributions."

Patents: The Petitioner states: "The fact that [the Petitioner] has two granted patents is unequivocal evidence of the major significance of his original scientific research contributions." The issuance of a patent, however, attests to the originality of a particular invention or innovation, rather than its significance.

¹ Cf. *Mei Chai Ye v. U.S. Dept. of Justice*, 489 F.3d 517, 519 (2d Cir. 2007) (an immigration judge may reasonably infer that when an asylum applicant submits strikingly similar affidavits, the applicant is the common source).

[redacted]. The president of a biochemical company that sells [redacted] to research laboratories states that the Petitioner's "research is of significant interest . . . because he has demonstrated . . . the synthesis of a novel [redacted] inhibitor that is both more effective than conventional [redacted] inhibitors and easier to manufacture, greatly impacting healthcare, biomedical research, and the economy of the United States." The Petitioner provides no direct evidence of the extent of this claimed impact. The very general claims quoted above have minimal probative value.

The journal article which identified [redacted] as an [redacted] inhibitor has 17 credited authors at eight universities in two countries. The Petitioner is the tenth-named author of the article; the first-named author did not work at the same university as the Petitioner. Given the size and diffusion of the researchers, it is reasonable to seek more details about the Petitioner's specific contributions to the project. A co-author asserts that the Petitioner "discovered [redacted]," but does not elaborate. This same co-author asserts that [redacted] "cures rheumatoid arthritis," but the record does not include objective documentary evidence to confirm this claim. Without supporting evidence, a claim of this magnitude has no weight and raises questions about the overall credibility of the letter in which it appeared.

Another letter includes the claim that the Petitioner actually developed [redacted], but the writer of that letter, a vendor, claims no first-hand knowledge of [redacted]'s discovery. The article co-authored by the Petitioner indicates that some of the authors "screened our in-house chemical library and identified [redacted]" indicating the compound was already present but undiscovered.

The record establishes the commercial availability of [redacted], but the record lacks objective, independent evidence that would establish the significance of the Petitioner's work with the compound relative to the field as a whole. Letters from individual researchers who use [redacted] do not necessarily represent a consensus within the field. The Petitioner has established that [redacted] is useful for certain applications, but usefulness is not synonymous with major significance.

Citations: Published articles are a key avenue by which a researcher may disseminate original contributions. Not every such contribution, however, is of major significance in the field. It is the Petitioner's burden to establish the significance of his published work.

The Petitioner documents citation of his published work, and asserts that these citations demonstrate its influence and significance. The Director acknowledged the citations but declined to consider them in the context of determining the significance of the Petitioner's contributions because "the regulations contain a separate criterion regarding the authorship of scholarly articles." We disagree with the Director's reasoning here, because the criterion at 8 C.F.R. § 204.5(h)(3)(vi) deals only with the Petitioner's authorship of scholarly articles; the *significance* of those articles is properly considered under 8 C.F.R. § 204.5(h)(3)(v). Heavy citation of a particular article is one way to measure that article's impact and influence.²

² See USCIS Policy Memorandum PM 602-0005.1, Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator's Field Manual (AFM) Chapter 22.2, AFM Update AD11-14 8 (Dec. 22, 2010), <https://www.uscis.gov/legal-resources/policy-memoranda>.

But it cannot suffice simply to show that citation has occurred. Rather, the Petitioner must establish that the citation rate of his published work is significantly high when compared with other published work in the same area. Here, the Petitioner has shown the number of citations his work has received, but he has not provided any basis for comparison with other work in the same area of research.

The Petitioner has made original scientific contributions, but has not shown them to be of major significance in the field.

Beyond the regulatory criteria at 8 C.F.R. § 204.5(h)(3), the Director concluded that the Petitioner has not shown that his entry into the United States will substantially benefit prospectively the United States as required by section 203(b)(1)(A)(iii) of the Act. The Director must explain in writing the specific reasons for denial. 8 C.F.R. § 103.3(a)(1)(i). Here, the Director simply stated: “it has not been established that the beneficiary’s entry will substantially benefit prospectively the United States,” without explaining the specific reasons for reaching that conclusion. If this issue were the only basis for denial of the petition, then the lack of an explanation would have raised significant issues. But the above discussion precludes approval of the petition and a detailed discussion of the prospective benefit issue cannot change the outcome of this appeal.³

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 lesser 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 conclusion 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. U.S. Citizenship and Immigration Services 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 provided evidence of a productive career, and shown that some of his work is useful to others in his field. He has not, however, established a level of recognition of his work indicative of the required sustained national or international acclaim or demonstrating 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 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). The objective documentation in the record does not support the level of recognition and influence claimed in letters written specifically to support the petition, several of which show evidence of common authorship or at least reliance on a common template. The Petitioner’s academic positions at, and since, the time of filing appear to amount to postdoctoral training, and do not reflect the demand for his services that one would expect from an acclaimed researcher at the top of the field.

³ *See INS v. Bagambashad*, 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); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

The Petitioner has not demonstrated eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.