



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

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

In Re: 13572239

Date: MAR. 1, 2021

Appeal of Nebraska Service Center Decision

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

The Petitioner, a developer and manufacturer of scientific instrumentation, seeks to classify the Beneficiary, its company president, 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 although the Petitioner submitted evidence to satisfy the initial evidence requirements for this classification, it did not demonstrate that the Beneficiary has sustained national or international acclaim and is among that small percentage who have risen to the very top of his field. The matter is now before us on appeal.

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 conclude that the Petitioner has met this burden. Accordingly, we will sustain 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 a beneficiary’s 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 it must provide sufficient qualifying documentation establishing that the beneficiary 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 beneficiary 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

At the time of filing, the Beneficiary was working in the United States as the president of the petitioning company. Because the Petitioner has not indicated or established that the Beneficiary has received a major, internationally recognized award, it must demonstrate that he satisfies at least three of the ten criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x) to meet the initial evidentiary requirements.

A. Evidentiary Criteria

The Director determined that the Petitioner met three of the initial evidentiary criteria, relating to judging the work of others, authorship of scholarly articles, and performance in leading or critical roles for an organization with a distinguished reputation. *See* 8 C.F.R. § 204.5(h)(3)(iv), (vi) and (viii). The evidence in the record supports the Director’s determination based on the Beneficiary’s work as a peer reviewer for professional journals in his field, his authorship of scholarly articles, and his critical and leading roles with the Petitioner, which has submitted ample evidence of its distinguished reputation in its industry.

On appeal, the Petitioner maintains that the Beneficiary has also made original scientific contributions of major significance in the field of ocean science and [REDACTED] consistent with 8 C.F.R. § 204.5(h)(3)(v) and asserts that he is otherwise qualified for classification as an individual of extraordinary ability based on the previously submitted evidence.

Because the Petitioner has established that the Beneficiary meets the requisite three evidentiary criteria, he has satisfied the initial evidence requirements. Therefore, we will consider the evidence submitted in support of the original contributions criterion, together with the balance of the record, to determine whether he possesses the level of sustained acclaim and standing in his field to establish his eligibility as an individual of extraordinary ability.

B. Final Merits Determination

As the Petitioner submitted the requisite initial evidence, we will evaluate whether it has demonstrated, by a preponderance of the evidence, the Beneficiary's 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 beneficiary's accomplishments and weigh the totality of the evidence to determine if their successes are sufficient to demonstrate that they have 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 1119-20.¹ In the present matter, the Petitioner has demonstrated the Beneficiary's eligibility for this classification.

The record reflects that the Beneficiary completed his education at the University [redacted] where he received his bachelor of science, master of science, and doctorate degrees in geography. After completing his graduate studies in 2001, he worked for the Petitioner as an external scientific consultant. Between 2002 and 2007, the Beneficiary worked as a post-doctoral fellow at [redacted] University and [redacted] Oceanography in [redacted], Canada, and as a research officer at the University of [redacted] School of Ocean Sciences. The Beneficiary accepted a senior scientist position with the Petitioner in 2007, later served as the Petitioner's vice president, and has been employed as its president since January 2019. Between 2014 and 2018, the Beneficiary worked in Europe for [redacted], a [redacted] scientific instrument company.

Overall, the record supports the Petitioner's claim that the Beneficiary's work, both as a researcher and in leading and critical roles with the petitioning company, has had a significant impact in the field of marine geology that has contributed to his sustained acclaim. Specifically, the record demonstrates his contributions to scientists' understanding of [redacted] in the aquatic environment and in advancing the scientific instruments and technologies used to measure and understand these [redacted] particularly with respect to the the Petitioner's unique [redacted] technology.

As noted, the Beneficiary is currently employed as the Petitioner's president and has previously held senior leadership and scientific roles with the company. The Petitioner has established that it enjoys an important and unique role in its industry as the only manufacturer of portable, [redacted] [redacted] instrumentation suitable for use in underwater environments. The record reflects that researchers at universities, consulting firms, and government agencies around the world rely on its [redacted] instruments to conduct fundamental aquatic [redacted] research, to carry out [redacted] studies and [redacted] assessments, and to respond to [redacted], [redacted], and other [redacted] disasters. The record contains many examples of the importance of this technology to scientific

¹ *See also* 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 9 (Dec. 22, 2010), <https://www.uscis.gov/policymanual/HTML/PolicyManual.html>. (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 for the immigrant classification).

[redacted] instruments used for measuring [redacted] and the [redacted] properties of water. The record reflects that the Petitioner develops and manufactures a line of instruments under the [redacted] brand name that rely on [redacted], [redacted], and [redacted] technologies, and are specifically designed for use in ocean and other aquatic environments.

research, the environment, and the public. For instance, the United States Environmental Protection Agency mandated that [redacted] be used on all vessels responding to the 2010 [redacted] [redacted] in the Gulf of Mexico.

The Petitioner has also provided detailed and probative descriptions of the Beneficiary's own critical scientific and leadership contributions to the company's product development and research efforts, indicating that he has been instrumental to its more recent product releases [redacted] [redacted], and the refinement of its older product lines since initially joining the company in 2007. The Petitioner and other experts in the field have also weighed in on the Beneficiary's earlier research, its relevance to the development and enhancement of its [redacted] technologies, and his influence on the use of [redacted] in his field. For example, [redacted], a research oceanographer with the [redacted] explains that, years prior to joining the petitioning company, the Beneficiary was one of the earliest users of [redacted] and published several analyses of the instrument that are "foundational in the scientific literature concerning the use of [redacted] in the coastal ocean." [redacted] co-founder of [redacted] a [redacted] marine survey and consulting firm, also discusses the influence of the Petitioner's early research using [redacted] technology, noting that he was the first in the world to demonstrate how researchers can estimate [redacted] and [redacted] [redacted] using the [redacted] and spurring "an avalanche of literally hundreds of papers using [redacted] results, almost all of them citing one or several of [the Beneficiary's] papers." [redacted] explains that, while working for the Petitioner, the Beneficiary has further contributed to the development of instrumentation and techniques that have been critical to research work in the field of [redacted] [redacted]

The Petitioner has also successfully demonstrated that its senior staff are well-known leaders in the field who remain unusually active in collaborative scientific research at the international level. [redacted] [redacted] Professor of Oceanography at [redacted] University in [redacted] Canada, explains that the Petitioner "is one of very few manufacturers that maintains a presence within the ocean science community by actively publishing original scientific results and presenting new technologies, constantly moving technology forward for the benefit of the global aquatic scientific community." [redacted] [redacted] explains that the Beneficiary "is well-recognized within the ocean science community as having a long track record of excellent and outstanding work within the field of [redacted]" both based on his contributions to the Petitioner's technologies and related publications, and based on his earlier work as a researcher. The record documents that the Beneficiary has been invited to present the Petitioner's latest products and research at dozens of conferences worldwide, further contributing to his international acclaim. [redacted] also emphasizes in his letter that [redacted] users and customers regularly seek the Beneficiary's input and participation in their original published research as further evidence of his reputation as a "recognized leader in his field."

In addition, several of the expert recommendation letters emphasize that the Beneficiary has made a major contribution to the field and cemented his international reputation by founding, organizing, and leading/chairing the Petitioner's bi-annual [redacted] conference series, which [redacted] describes as "a major conference for research related to [redacted] in the aquatic environment." [redacted] of the University [redacted] in the United Kingdom describes [redacted] as "an indispensable forum for scientists working in the field of aquatic [redacted]" while [redacted] of [redacted] University in [redacted] Virginia, opines that "the importance of the [redacted] workshops in advancing the collaboration and exchange of ideas amongst scientists working mainly in the aquatic

environment cannot be overstated.” The record reflects that [redacted] has been held in partnership with universities in France, Spain, Denmark, Hungary, and Portugal since 2008 and has published its conference proceedings in a special issue of the professional journal *Geo-Marine Letters* for which the Beneficiary, as conference chair, served as the guest editor.

Based on the foregoing, the evidence establishes that both the Beneficiary’s leading and critical roles with the Petitioner and his related scientific contributions have garnered him sustained acclaim and place him among the small percentage at the top of a field in which the petitioning company maintains a high profile as an industry leader.

The record also indicates that the Petitioner has reviewed numerous manuscripts for at least twelve different professional publications in his field. He has also served as guest editor for the aforementioned special issue of *Geo-Marine Letters*, and, as discussed above, is the founder and co-chair of the bi-annual [redacted] conference, which the record reflects is regarded by experts as a major conference in his area of expertise. We find the Beneficiary’s extensive judging experience, when reviewed together with the achievements described above, to be consistent with a determination that he is among the small percentage at the top of his field of endeavor. *See* 8 C.F.R. § 204.5(h)(2).

The Petitioner has also provided evidence of the Beneficiary’s authorship of a considerable amount of published material, including numerous articles that appeared in distinguished professional journals. As authoring scholarly articles is inherent to scientists and researchers, the citation history and other evidence of the influence of a beneficiary’s articles can be an important indicator of the impact and recognition that his work has had on the field and whether such influence has been sustained. The Petitioner argues that the Beneficiary has spent most of his post-graduate career in private industry and asserts that the Director inappropriately compared his publication record and citation history to those of scientists who work as researchers or in academia in determining that his citation history did not reflect that he is among the small percentage of individuals at the very top of his field. In this regard, the Petitioner emphasizes that the approximately 1500 citations the Beneficiary has received should be considered in light of the totality of the evidence and the additional acclaim he has achieved as a senior scientist and leader for a private company that occupies a unique position in its specialized industry and provides essential research tools to scientists working in the ocean science field on a worldwide basis.

The Petitioner also highlights its submission of letters from experts that address in detail the significance of the Beneficiary’s earlier published research related to [redacted]. For example, the record reflects that, during his post-graduate fellowship, the Beneficiary developed a platform called [redacted] for the investigation of [redacted] in the aquatic environment close to the seabed. [redacted] describes [redacted] as a “significant technological and scientific advance” and states that derivatives of [redacted] are still in use 15 years after the Beneficiary first published his research. Several of the letters also credit the Beneficiary with pioneering the use of a statistical method called entropy analysis for the characterization of [redacted]. [redacted] explains that this method has since been “used in studies ranging from basic [redacted] to studies of [redacted] matter . . . to [redacted] studies to evaluate the [redacted] – an important parameter when trying to [redacted] after an [redacted].” [redacted] confirms that the Beneficiary’s [redacted] method has been used by many other researchers and notes its application to studies of the environmental impact of aquaculture sites and in climate studies. [redacted]

[redacted] summarizes the Beneficiary's papers and asserts that both his research contributions and his contributions to the Petitioner's products "are well-recognized in the scientific community and have enhanced the quality of research in the field."

Although the Beneficiary is currently working in the private sector, he continues to publish his work and maintains a high profile as a leader in his scientific community as evidenced by his senior role with the Petitioner, his frequent attendance as an invited speaker and presenter at major international conferences, and his position as the founder and co-chair of the [redacted] conference.

When considered in the aggregate with the evidence discussed above, the Petitioner has demonstrated that the Beneficiary's achievements are reflective of a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990). The record supports a finding that the Beneficiary is among the small percentage at the top of his field of endeavor with sustained national or international acclaim. *See* 8 C.F.R. § 204.5(h)(2)-(3).

III. CONCLUSION

The Petitioner has shown that the Beneficiary meets at least three of the evidentiary criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Petitioner has also demonstrated the Beneficiary's sustained national and international acclaim and that his achievements have been recognized through extensive documentation. For these reasons, we conclude that the Beneficiary qualifies for classification as an individual of extraordinary ability.

ORDER: The appeal is sustained.