



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

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

In Re: 23214150

Date: NOV. 14, 2022

Appeal of Nebraska Service Center Decision

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

The Petitioner, a researcher in the field of 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 record did not establish that the Petitioner had satisfied at least three of ten initial evidentiary criteria, as required. The matter is now before us on appeal.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). We review the questions in this matter *de novo*. *See Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will sustain the appeal.

I. LAW

Section 203(b)(1)(A) of the Act makes immigrant visas available to individuals with 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, provided that the individual seeks to enter the United States to continue work in the area of extraordinary ability, and the individual'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). The regulation at 8 C.F.R. § 204.5(h)(4) allows a petitioner to submit comparable evidence if they are 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) (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 earned a doctoral degree in physiology in Chile at [REDACTED] in 2012. Some of his doctoral studies took place at academic research institutions in Brazil, Chile, the United States, and Italy. The Petitioner most recently entered the United States as an H-1B nonimmigrant to work as a researcher/project scientist at the University of [REDACTED]. In June 2022, he was granted H-1B status to work as a research engineer at [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 claims to have satisfied several of these criteria, relating to original contributions of major significance; participation as a judge of the work of others; receipt of lesser nationally or internationally recognized prizes for excellence in the field; commanding a high salary or significantly high remuneration for services in relation to others in the field; membership in associations in the field for which classification is sought, which require outstanding achievements of their members as judged by experts in their disciplines or fields; published materials about him in professional or major trade publications or major media; and authorship of scholarly articles.

The Director concluded that the Petitioner met the criteria relating to authorship of articles. On appeal, the Petitioner asserts that he meets six additional criteria noted above, and that the Director therefore should have proceeded to a final merits determination. After reviewing all of the evidence in the record, we conclude that the Petitioner meets the requisite minimum of three criteria, and that after a final merits determination, he merits a first preference immigrant visa as an individual with extraordinary ability in the sciences.

A. Evidentiary Criteria

Evidence of the individual’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)

The Director found that the Petitioner met this criterion, and we agree. The Google Scholar database showed over 200 citations of his published articles. The U.S. Citizenship and Immigration Services

(USCIS) *Policy Manual* states “a goodly number” of such citations “may be probative of the significance of the person’s contributions to the field of endeavor.” We believe that is indeed the case here and, as such, conclude he has met this criterion.

Evidence of the individual’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)

This criterion requires evidence of the person’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). The first step in the analysis is to determine whether the person made an original contribution to the field. Group efforts do not lessen the originality of a contribution; all parties identified as part of the group are considered to have made the contribution. The phrase “major significance” is not defined by the regulations or policy. Therefore, we utilize a plain language reading of the criterion and require a person show their contribution made more than a *de minimis* impact on the field.

The record contains detailed, probative letters from several research colleagues in the Petitioner’s field. For example, one colleague describes how the “[Petitioner] has been developing technology, new tools, and experimental setups to study [redacted]. He further explains how he and his “collaborators in Brazil and Sweden have been using some of these tools to conduct experiments where the [redacted] activity of rodents is recorded as they actively perform different [redacted]. Another colleague describes how her work with the Petitioner focuses on developing [redacted] recording patches that can be placed onto [redacted] skin in order to record data. She explains how the Petitioner is an expert in [redacted] [redacted] and has provided tremendous value in designing, testing, and deploying these groundbreaking systems.” She also explains that the Petitioner’s research contributions are helping her deploy a National Institutes of Health (NIH) study in Ukraine for children with [redacted] due to prenatal [redacted] exposure. She states:

Patches are revolutionary and allow researchers to monitor [redacted] systems in a continuous and noninvasive manner in ways that were previously not possible with such ease. . . . we are only at the tip of the iceberg in this area. . . . He has conducted research on how the [redacted] and the interaction between the [redacted]. He has worked to understand the [redacted] [redacted] specifically the impact of [redacted] on the [redacted].

Additional evidence, including several more letter writers attesting in meaningful detail to his original contributions to the field of [redacted] the award of grants to conduct [redacted] research, and his scholarly contributions in the form of scholarly articles that have been repeatedly cited to, all support finding that he has made original contributions of major significance in his field. The Petitioner has satisfied this criterion by a preponderance of the evidence.

Evidence of the individual’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)

To meet this criterion, a petitioner must show evidence of the person’s “participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.” 8 C.F.R. § 204.5(h)(3)(iv). The petitioner must show that the person has not only been invited to judge the work of others, but also that the person actually participated in the judging of the work of others in the same or allied field of specialization.

The record includes evidence of the Petitioner’s role advising undergraduate students at the University of [redacted] in his field of [redacted] sciences. The evidence further shows that he served as a thesis advisor to graduate students in Chile. The record contains detailed and meaningful letters from colleagues concerning his work judging the work of others in his field. As such, he has demonstrated he meets the criterion at 8 C.F.R. § 204.5(h)(3)(iv).

Published material about the individual 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)

To meet this criterion, the published material should be about the person, relating to the person’s work in the field, not just about the person’s employer or another organization that the person is associated with. In addition, published material that includes only a brief citation or passing reference to the person’s work is not “about” that person. *See Noroozi v. Napolitano*, 905 F.Supp.2d 535 (S.D.N.Y. 2012) (articles about the Iranian table tennis team mentioning a person only briefly were not about him); *see also Negro-Plumpe v. Okin*, 2008 WL 106997512 (D. Nev. 2008) (articles focusing on a character or show were not about the actor).

The Petitioner submitted three published articles that cover the Petitioner’s work. One article titled [redacted] was published in a Chilean newspaper of national circulation on [redacted] 2021. It discusses the Petitioner’s work, but does not include an author and therefore does not meet the requirements of 8 C.F.R. § 204.5(h)(3)(iii). Another article dated [redacted] 2021 in the [redacted] County News titled [redacted] [redacted] discusses the fact that the Petitioner was one of 36 scientists nationally who received this grant for [redacted] research from the National Science Foundation (NSF). However, since the article shows no author and appears to have been only circulated locally, it does not meet the requirements of 8 C.F.R. § 204.5(h)(3)(iii) either. The final article titled [redacted] dated [redacted] 2019 and written by [redacted] was published in *Ethology, Zoology Scientific News*. The English translation of this article however, provides no indication about whether this is a professional or major trade publication. Nor was any independent evidence provided to show this publication constitutes “major media.” As such, none of the articles provided meet the requirements of 8 C.F.R. § 204.5(h)(3)(iii).

B. Final Merits

The Petitioner has submitted the requisite initial evidence, having provided evidence that he meets at least three of the ten criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x) as a researcher specializing in the area of [redacted]. 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.

The evidence establishes that, as a researcher at two preeminent educational and research institutions in the United States, the Petitioner has achieved sustained acclaim in the field for his work in [redacted] patches that may have the ability to revolutionize research and medical practices worldwide. For instance, the patches he developed measure [redacted] providing continuous monitoring to medical personnel in a noninvasive way, which is particularly important in the care of vulnerable populations such as [redacted] patients. He has demonstrated the effectiveness of his research and its application by gaining prestigious funding awards from national research institutions and foundations including NIH, NSF, and the [redacted] Institute. Furthermore, his colleagues describe him as a leader in his field and someone who is sought out to present at scientific meetings and in seminars organized by important research institutes. The three articles provided show that his work has garnered international recognition, with one article published in a Chilean national newspaper, and another in a Russian language scientific publication. His colleague at the [redacted] Institute describes how the Petitioner's research will help in treating [redacted]. In particular, the technique developed by the Petitioner allows [redacted] light controlled remotely and is used by researchers looking at [redacted] model. The importance of the Petitioner's ongoing research and the application of the tools he has developed to assist other researchers in areas of major importance to the U.S. medical research community places him as one of the small percentage at the top of his field.

C. Continue to Work in the Field

Per section 203(b)(1)(A)(ii) of the Act, the Petitioner must establish that he seeks to enter the United States to continue work in his area of extraordinary ability. The Petitioner has indicated that he is employed at [redacted] University as a research scientist and there is no indication in the record that he has any plans other than to continue to perform work in his field. As such, this requirement appears to be met.

III. CONCLUSION

The Petitioner has submitted the required initial evidence and demonstrated in the final merits determination that he is researcher of extraordinary ability. In addition, he has shown that he will continue to work in his area of extraordinary ability and that his entry will substantially benefit prospectively the United States.

ORDER: The appeal is sustained.